

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION - SANTA ANA

-000-

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

LANCE BOLAND, an individual;  
MARIO SANTELLAN, an individual;  
RENO MAY, an individual; JEROME  
SCHAMMEL, an individual; and  
CALIFORNIA RIFLE & PISTOL  
ASSOCIATION, INCORPORATED, a  
California corporation,

Plaintiffs,

v.

No. 8:22-cv-01421-CJC

ROBERT BONTA, in his official  
capacity as Attorney General  
of the State of California;  
and DOES 1-10,

Defendants.

REPORTER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1  
SANTA ANA, CALIFORNIA  
JANUARY 23, 2023

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1 (Proceedings commenced on January 23, 2023, at 9:11 a.m.)

2 THE COURTROOM DEPUTY: Please remain seated and come  
3 to order. This United States District Court is now in session.  
4 The Honorable Cormac J. Carney presiding.

5 THE COURT: Good morning.

6 (All replied, "Good morning, Your Honor.")

7 THE COURTROOM DEPUTY: Calling Item Number 1, SACV  
8 22-01421, Lance Boland, et al., versus Robert Bonta.

9 Counsel, please state your appearances.

10 MR. DALE: Joshua Dale for plaintiffs.

11 MR. BRADY: Sean Brady for plaintiffs.

12 MR. FRANK: Alexander Frank for plaintiffs.

13 THE COURTROOM DEPUTY: Good morning, Your Honor.

14 MR. MOROS: Konstadinos Moros for plaintiffs.

15 THE COURT: Good morning, gentlemen.

16 MR. SAROSY: Good morning. Charles Sarosy for  
17 defendant.

18 THE COURT: Hello, sir.

19 MR. WOODS: Good morning, Your Honor. Clint woods  
20 for defendant.

21 THE COURT: Hello, sir.

22 MR. BECKINGTON: And good morning, Your Honor. Mark  
23 Beckington, also for defendants.

24 THE COURT: Hello, sir.

25 well, thank you for being here. The way I envision this

1 is we're going to have what I'll call two phases. The first is  
2 what I would call the evidentiary hearing, where I would like  
3 to hear witnesses on the important issues in the case. And  
4 then the second phase is what we'll call the argument phase  
5 where you'd make your arguments and I ask you questions.

6 So it looks like we have a witness all ready to go. This  
7 is the first witness on the video?

8 MR. BRADY: That's correct, Your Honor.

9 THE COURT: Okay. And who is that?

10 MR. BRADY: That is Stephen Helsley.

11 THE COURT: Okay. And, Rolls, do you want to swear  
12 Mr. Helsley in?

13 THE COURTROOM DEPUTY: Will do, Your Honor.

14 THE COURT: All right.

15 THE COURTROOM DEPUTY: Do you solemnly swear that the  
16 testimony you shall give in the cause now before this Court  
17 shall be the truth, the whole truth, and nothing but truth, so  
18 help you God?

19 THE WITNESS: I do.

20 THE COURT: Have him state his name for the record.

21 THE COURTROOM DEPUTY: Please state your name for --  
22 please state your name and spell your last name for the record.

23 THE WITNESS: Yes. My name is Stephen,  
24 S-t-e-p-h-e-n, Craig, Helsley, H-e-l-s-l-e-y.

25 THE COURT: Please proceed, Counsel.

1 MR. BRADY: Thank you, Your Honor.

2 STEPHEN CRAIG HELSLEY,  
3 called by and on behalf of Plaintiffs, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BRADY:

6 Q. Good morning, Mr. Helsley. Can you hear me?

7 THE COURTROOM DEPUTY: Mute your speaker.

8 THE WITNESS: Yes.

9 BY MR. BRADY:

10 Q. Okay. Thank you for joining us this morning, Mr. Helsley.  
11 Can you provide the Court with your background, your former  
12 employment with the California Department of Justice and other  
13 related background?

14 A. Yes. I was hired by the California Department of Justice  
15 in June of 1967 as a narcotic agent trainee. Later, I was  
16 promoted to a supervisor position and then to a manager's  
17 position.

18 And then in 1979, the then Attorney General Deukmejian  
19 promoted me to be the Chief of the Bureau of Narcotic  
20 Enforcement.

21 Later, Attorney General Van de Kamp transferred me to run  
22 the Bureau of Forensic Services, which is the California crime  
23 laboratory system.

24 And then Attorney General Van de Kamp promoted me to be  
25 the Assistant Director of the Division of Law Enforcement,



1 which in the context of how the department is structured, now  
2 the titles of the positions, I would now be the Chief of the  
3 Division of Law Enforcement.

4 Q. Okay. And in your capacity in any of those roles at the  
5 California Department of Justice, did you have any firearms  
6 experience?

7 A. Yes. I was the Department's firearms instructor for  
8 trainings for about ten years. I went to a variety of range  
9 masters schools and firearm classes.

10 And then when the assault weapon debate began, Attorney  
11 General Van de Kamp assigned me to be the lead in terms of  
12 technical firearm-related things for the Roberti-Roos Assault  
13 Weapon Control Act bill.

14 Q. And you have now since retired from the California  
15 Department of Justice?

16 A. Yes. I was with the Department for 26 years.

17 Q. Are you currently employed in any fashion?

18 A. Well, sort of employed. I serve as historian for two  
19 British gun-making firms, John Rigby & Company and William  
20 Powell. But I can't really say that I'm paid. I trade my work  
21 for information that I need from, say, Powell. I'm writing a  
22 book on Powell, and I need them to do things for me. So it's  
23 sort of a trade situation.

24 Q. So you author books about firearms?

25 A. Yes. I've co-authored five books on firearms.

1 Q. You have been an expert witness in cases against the  
2 California Department of Justice in firearm-related matters on  
3 several occasions; is that correct?

4 A. I have.

5 Q. Do you recall how many cases? If you don't know the exact  
6 number, an estimate would suffice.

7 A. well, I think -- it's getting a little bit vague in my  
8 head now with age, but I think I've been deposed by the  
9 Department on three occasions.

10 Q. Okay. And do you recall for what you were being called as  
11 an expert in those other cases?

12 A. One of them was magazines, the capacity of magazines.  
13 That was the Duncan case.

14 One of them was what constituted handgun ammunition. That  
15 was the Parker case.

16 And then -- I'm a little bit vague. I think I was deposed  
17 in the Rupp case, which is assault weapon case.

18 Q. And as an expert, what were you being offered to testify  
19 about in those matters? What was your expertise that you were  
20 being called for the plaintiffs to rely on?

21 A. well, the nature of the questioning was how much did I  
22 know about ammunition, how much did I know about firearms, what  
23 did I know about the history of the process that brought us to  
24 the deposition. The questioning was the full range of  
25 firearm-related questions.

1 Q. So would it be fair to characterize your expertise as in  
2 firearm technicalities and the historical background on firearm  
3 development?

4 A. Yes.

5 Q. In any of those cases, do you recall if the Attorney  
6 General's Office ever challenged your expertise as being an  
7 expert in any of those fields?

8 A. They didn't. As a matter of fact, I think that in one  
9 case, there were sort of an informal stipulation that I was an  
10 expert.

11 Q. Got it. Are you familiar with the term "chamber load  
12 indicator"?

13 A. I am.

14 Q. And what is a chamber load indicator to you?

15 A. It's a mechanical device on a firearm that lets the user  
16 know that there is a cartridge in the chamber of the gun  
17 without opening the gun.

18 MR. BRADY: Am I unable to share my screen?

19 THE COURTROOM DEPUTY: Try and see.

20 MR. BRADY: I just did. It said "Host disabled  
21 participant screen sharing." I'm just wondering if that is the  
22 Court or if that's him, or is it us?

23 THE COURTROOM DEPUTY: Let me -- I can make you as a  
24 co-host and see.

25 MR. BRADY: I apologize, Your Honor.

1 THE COURT: No apologies necessary. Hopefully, we  
2 can get it.

3 THE COURTROOM DEPUTY: I'll try it.

4 MR. BRADY: There. I think that -- okay. That  
5 works. Thank you.

6 THE COURTROOM DEPUTY: Good? Okay.

7 BY MR. BRADY:

8 Q. Mr. Helsley, can you tell me what you see on your screen?

9 A. First of all, the firearm is a shotgun based on the Powell  
10 patent 1163 of 1864. And that firearm is equipped with a  
11 loaded chamber indicator, which is Powell's patent 1055 of  
12 1869.

13 Q. So am I correct in understanding that this is an image of  
14 a firearm that has chamber-load-indicator technology that has  
15 been around since at least 1869?

16 A. Correct.

17 MR. BRADY: I would like to offer Exhibit 1. This is  
18 Exhibit 1 for everybody's reference.

19 THE COURT: Any objection?

20 MR. WOODS: No objection.

21 THE COURT: Exhibit 1 will be received into evidence.

22 (Exhibit 1 was received into evidence.)

23 BY MR. BRADY:

24 Q. Mr. Helsley, can you take a look at your screen and tell  
25 me what you see?

1 A. Yes. That's a different view of the same firearm, showing  
2 the firing pin is inlaid with platinum, and it says, "loaded."

3 Q. So this is another example of a chamber load indicator?

4 A. Yes.

5 Q. From around -- based on a patent from 1869?

6 A. Yes.

7 MR. BRADY: I'd like to offer this as Exhibit 2.

8 THE COURT: Any objection?

9 MR. WOODS: No objection.

10 THE COURT: Exhibit 2 will be received into evidence.

11 (Exhibit 2 was received into evidence.)

12 BY MR. BRADY:

13 Q. As a historian of firearm development, have you formed any  
14 opinions on whether chamber-load-indicator technology has ever  
15 been widely adopted by the firearm industry?

16 A. It has not. Powell, for instance, when they designed  
17 their next firearm and patented it in 1876, the chamber loaded  
18 indicator was dropped, never to surface again.

19 Q. Are you aware, Mr. Helsley, of any semi-automatic handgun  
20 models that incorporated chamber-load-indicator technology  
21 prior to, say, 1990?

22 A. Yes. Walther had one designed for their PP and PPK  
23 pistols. And that would be 1929.

24 Q. 1929 was the year that Walther produced that model with  
25 the chamber loaded indicator?

1 A. That's when they brought it to the market.

2 Q. Okay. As a historian, are you familiar with any laws that  
3 have required chamber load indicators on firearms to be sold?

4 A. Obviously, the California law.

5 Q. Other than that?

6 A. Massachusetts has sort of a requirement. And I say, "sort  
7 of" because, if the handgun has a 10-pound trigger pull and an  
8 external safety, then the indicator is not required. That is  
9 the only state that I know of.

10 Q. Got it. Would it be fair to say that your testimony is,  
11 that chamber load indicators have been commercially available  
12 since at least 1869 but have never enjoyed any popularity in  
13 the commercial firearms market?

14 MR. WOODS: Objection. Lacks foundation.

15 THE WITNESS: The authors of the definitive book on,  
16 say, British shotguns refer --

17 MR. WOODS: I'm sorry. I wanted to interpose an  
18 objection -- I apologize -- that the question lacks -- or calls  
19 for something that lacks foundation.

20 THE COURT: Overruled.

21 MR. WOODS: Thank you.

22 MR. BRADY: May the witness proceed, Your Honor?

23 THE COURT: Please do.

24 BY MR. BRADY:

25 Q. I'm sorry, Mr. Helsley. The question was, in your

1 knowledge of history of firearms and chamber load indicators,  
2 have you formed any opinions on whether the chamber load  
3 indicators have been commercially -- have enjoyed commercial  
4 success in the firearms marketplace?

5 A. Very little success.

6 Q. So they have not been popular?

7 A. No.

8 THE COURT: I would be interested to know why.

9 BY MR. BRADY:

10 Q. Mr. Helsley, do you have any thoughts as to why that would  
11 be the case? Do you have opinions, in your expert opinion?

12 A. Well, the key here is training and education. If the  
13 person who's going to handle the firearm doesn't know what a  
14 loaded chamber indicator is, it will have very little meaning  
15 to them.

16 The loaded chamber indicators aren't used on revolvers,  
17 they're not used on rifles or shotguns. To the extent that  
18 they're used, they're used on semi-automatic pistols. And in  
19 some cases, they're nothing more than just a little bit of red  
20 paint on a small part.

21 So it's -- the user has to assume that all guns are always  
22 loaded. And if you do that, then you're in good shape. If  
23 you're relying on a 12-year-old boy picking up a handgun and  
24 knowing what that little red thing means, it's a mistake.  
25 Safety is between the ears and not a mechanical device.

1 Q. Can I ask you, in your experience with firearms, you  
2 have -- obviously, you were a trainer for the California  
3 Department of Justice, so you have experience with firearms,  
4 shooting them and training people with them; correct?

5 A. Yes.

6 Q. In your experience, would a chamber load indicator alter  
7 the way that you treat a firearm, in any way?

8 A. No.

9 Q. And that's because, as you indicated, the rule of firearm  
10 safety is you always treat a firearm as if it were loaded;  
11 right?

12 A. Correct.

13 Q. And if you do that, then a magazine -- or I'm sorry -- a  
14 chamber load indicator provides no benefit.

15 Is that fair to say?

16 A. Correct. You need to keep your finger out, away from the  
17 trigger, and you need to have the barrel pointed in a safe  
18 direction.

19 Q. Are you familiar with magazine disconnect mechanisms?

20 A. I am.

21 THE COURT: Before you get to that, I just have one  
22 question.

23 MR. BRADY: Of course, Your Honor.

24 THE COURT: Mr. Helsley, am I to then understand  
25 that, if you have a CLI, it's really -- well, why -- let me



1 rephrase that question.

2 Is it then just an aesthetic issue, from your standpoint,  
3 why manufacturers don't put a chamber load indicator on the  
4 weapon?

5 THE WITNESS: There are reasons. For instance, some  
6 of the devices aren't particularly reliable and can break and  
7 cause the firearm to malfunction. The way it's been described  
8 to me is they're viewed as gadgets, and they're a way to help  
9 sell a product, but they're not really for safety because  
10 there's no training that goes in to tell the user what they  
11 are. And so for whatever the reasons, the industry has just  
12 not adopted them all over the last century.

13 THE COURT: So they're just not needed from the  
14 manufacturer's standpoint?

15 THE WITNESS: Yes. If there was a need, I am sure  
16 they would meet the need.

17 THE COURT: But they don't impact the structural  
18 integrity of the weapon or its ergonomics; is that fair?

19 THE WITNESS: Correct.

20 THE COURT: I'm sorry, Counsel.

21 MR. BRADY: Of course. Please feel free, Your Honor.

22 Q. Mr. Helsley, are you familiar with magazine disconnect  
23 mechanisms?

24 A. I am.

25 Q. Can you explain what your understanding is of a magazine

1 disconnect mechanism?

2 A. The magazine disconnect disables the firearms if the  
3 magazine is not inserted fully.

4 Q. And what is the purpose, the purported purpose, of that,  
5 to your knowledge?

6 A. Well, the proponents would say that it's a safety feature  
7 that you could store the firearm in a different place than the  
8 magazine and thus the gun couldn't be fired.

9 In the law enforcement context, some would argue that  
10 the -- if you're in a fight with a suspect and the magazine  
11 comes out of the gun, then the suspect can't take your gun and  
12 shoot you with it.

13 Q. Is it your understanding that law enforcement officers are  
14 exempt from the unsafe handgun requirement?

15 A. They are.

16 Q. And in your experience as a law enforcement officer in  
17 California, do law enforcement officers, in your experience,  
18 tend to carry handguns that are on the roster or are not on the  
19 roster?

20 A. That's difficult to say because guns come and go from the  
21 roster. And departments buy guns, replace guns. The majority,  
22 I believe, of California law enforcement carry one of the  
23 Glocks. There are lots of models of Glocks. My guess is that  
24 80 percent or more of California law enforcement carry Glocks.  
25 To the best of my knowledge, there is no Glock with a magazine

1 disconnecter.

2 Q. Do you know, Mr. Helsley, when magazine disconnect  
3 mechanism were invented?

4 A. The first magazine disconnecter that I'm aware of was part  
5 of the Browning Hi-Power, it was called; or in its military  
6 role, the P35.

7 Q. Is that a handgun?

8 A. 1935.

9 Q. Is that a handgun?

10 A. That's a handgun.

11 Q. A semi-automatic handgun?

12 A. Yes.

13 Q. And, obviously, it has a detachable magazine if it has a  
14 magazine disconnect mechanism; correct?

15 A. Yes.

16 Q. I'm sorry. What year did you say? Did you say what year  
17 that model of firearm was invented or put on the market?

18 A. In '35.

19 Q. 1935. So at least one -- and that Browning Hi-Power is  
20 made -- Browning is a fairly large firearm manufacturer;  
21 correct?

22 A. Yes.

23 Q. Especially at that time?

24 A. Yes.

25 Q. So is it fair to say that at least one commercial

1 semi-automatic handgun model available to the public came with  
2 a magazine disconnect mechanism back in 1935?

3 A. Correct.

4 Q. As a historian of firearm development, have you formed any  
5 opinions on whether magazine-disconnect-mechanism technology  
6 has ever been widely adopted by the firearm industry.

7 A. It has not.

8 Q. Have you ever seen a Browning Hi-Power without a magazine  
9 disconnect mechanism?

10 A. Yes. The law enforcement officers that I worked with that  
11 carried that as a duty firearm, had it removed from the pistol.

12 Q. Removed?

13 A. Removed.

14 Q. So magazine disconnect mechanisms can be removed?

15 A. Can be easily removed.

16 Q. Easily. Can you explain "easily"? What was more or less  
17 the basic process? Could, for example, I do it? Or would it  
18 take a little bit more like somebody like yourself?

19 A. If you're familiar with hand tools, it's simple to do.  
20 What's involved -- and, of course, you can go onto the web and  
21 get all the instructions you want on this. You drift out a pin  
22 that is in the trigger -- okay. Back up a step.

23 You would field strip the firearm so that the slide is off  
24 the frame, you drift the pin out of the trigger, and then you  
25 reach in with a probe of some sort and pull the safety back,

1 and the magazine disconnect device with a spring will come out.  
2 You push the safety back into place, you reassemble the gun,  
3 and that's it. It's a three- or four-minute process.

4 Q. And, Mr. Helsley, why do people remove magazine disconnect  
5 mechanisms? What is the point of doing that?

6 A. The reasons are two. First of all, the trigger pull can  
7 be enhanced with the magazine disconnect out. The magazine  
8 disconnect, when the trigger is pulled, is pushing against  
9 the magazine before it releases the sear, and that causes a  
10 rough and inconsistent trigger pull. More importantly, though,  
11 it keeps the magazine from dropping free.

12 So when law enforcement is trained, generally, they  
13 want -- for rapid reloading of their handgun, they want to be  
14 able to push the magazine release button, have the magazine  
15 drop free from the gun, and insert a new one. The magazine  
16 disconnect won't allow that.

17 And also -- and then there is this debate. Most law  
18 enforcement that I know of want to be able to -- if they only  
19 have the one round in the chamber of the gun when they're  
20 reloading, they want to be able to fire the gun. And, of  
21 course, the magazine disconnect won't allow that. So it  
22 won't allow the firing of one round in the chamber during the  
23 reload, it slows down the reload, and it makes for a trigger  
24 pull that is not very good.

25 Q. Got it.

1 THE COURT: And for those three reasons, Mr. Helsley,  
2 is that why the industry hasn't widely adopted magazine  
3 disconnect mechanisms?

4 THE WITNESS: Well, I can only guess on that.

5 THE COURT: I wouldn't want you to guess.

6 Do you know why, then, it isn't widely adopted?

7 THE WITNESS: Again, I have to assume that the  
8 customers didn't want it.

9 BY MR. BRADY:

10 Q. Mr. Helsley, can you tell me what you see on your screen?

11 A. This is a newer version of the Browning Hi-Power.

12 Q. And it looks like this is now made by FN?

13 A. Yes. Well, FN and Browning have always had a connection.

14 Q. Okay. So there is -- it's still the same manufacturer as  
15 the previous Browning Hi-Power?

16 A. Yeah. The Browning Hi-Power, quote, unquote, has been  
17 made in a variety of places. It was a military firearm during  
18 world war II. I believe it was made in Canada at that time.  
19 But this is the latest one. The FN -- I assume this is being  
20 made in America.

21 Q. So it's your understanding this is the latest iteration of  
22 the Browning Hi-Power?

23 A. Yes.

24 Q. On the screen here, the first line on this page of  
25 Browning's discussion of its new -- or FN describing the new

1 Hi-Power, it says, "Magazine disconnect deleted."

2 what is your understanding of that language?

3 A. That they redesigned it to eliminate the magazine  
4 disconnect function.

5 Q. So the latest version of the Hi-Power, that always had the  
6 magazine disconnect mechanism, no longer has it?

7 A. Correct.

8 Q. Are you familiar with any laws, other than -- excuse me --  
9 California's Unsafe Handgun Act, that have ever required  
10 firearms have magazine disconnect mechanisms?

11 A. No.

12 Q. So would it be fair to sum up your testimony on magazine  
13 disconnect mechanisms that they have been commercially  
14 available since at least 1935 in popular semi-automatic  
15 handguns but have never enjoyed popularity in the commercial  
16 marketplace?

17 A. Whatever popularity there was was very limited.

18 Q. And there were no laws, to your knowledge, that required  
19 them?

20 A. No.

21 Q. So it wasn't a popular feature among lawmakers?

22 A. No.

23 MR. BRADY: I would like to offer this as Exhibit 3,  
24 the depiction of the Browning Hi-Power.

25 THE COURT: Any objection?

1 MR. WOODS: No objection.

2 THE COURT: Exhibit 3 will be received into evidence.

3 (Exhibit 3 was received into evidence.)

4 BY MR. BRADY:

5 Q. Mr. Helsley, are you familiar with the term  
6 "microstamping"?

7 A. I am.

8 Q. Can you explain to us what your understanding of that is?

9 A. Microstamping is the -- I assume it's done by laser,  
10 putting identifying characteristics on the tip of a firing pin  
11 so that, when that firing pin strikes the primer of a  
12 cartridge, it will allow for the identification of whether or  
13 not that cartridge was fired in a particular firearm.

14 Q. Are you aware of any commercially sold firearm that has  
15 ever been manufactured with microstamping technology?

16 A. No.

17 Q. Are you aware of any technology similar to microstamping  
18 that have ever been included on commercially manufactured  
19 firearms?

20 A. No.

21 MR. BRADY: Thank you, Mr. Helsley. That will be  
22 all.

23 THE COURT: All right.

24 CROSS-EXAMINATION

25 BY MR. WOODS:



1 Q. Good morning, Mr. Helsley.

2 A. Good morning.

3 Q. My name is Clint Woods. I'm a Deputy Attorney General for  
4 the State of California. I just have very few questions for  
5 you.

6 You retired from the California Department of Justice  
7 before the Unsafe Handgun Act was enacted; correct?

8 A. Correct.

9 Q. So as part of your duties with the California Department  
10 of Justice, you never interacted with the Unsafe Handgun -- the  
11 Unsafe Handgun Act or the roster of handguns; is that correct?

12 A. Not as far as my duties with DOJ is concerned.

13 Q. Okay. Are you aware -- you had some testimony about -- we  
14 looked at some pictures of shotguns with chamber load  
15 indicators.

16 Do you recall that testimony?

17 A. Yes.

18 Q. Those really old guns from the 1800's; is that right?

19 A. I'm sorry. Say again.

20 Q. The really old shotguns from the 1800's?

21 A. Yes.

22 Q. Okay. Do you know whether shotguns are required to have  
23 chamber load indicators in California?

24 A. They are not.

25 Q. Okay. You testified earlier that it was your guess that

1 around 80 percent of law enforcement used Glocks.

2 Do you recall that testimony?

3 A. Yes.

4 Q. Okay. Have you ever done any kind of formal or informal  
5 survey of how many law enforcement agents in California use  
6 Glocks?

7 A. No. It's just based on visual observation of the police  
8 officers I see. They all seem to have Glocks in their  
9 holsters.

10 Q. Understood. Do you know if there are any Glocks that are  
11 currently on California's roster?

12 A. There are.

13 Q. Do you know how many?

14 A. No.

15 MR. WOODS: Okay. All right. No further questions.

16 THE COURT: All right. Anything further?

17 MR. BRADY: Nothing, Your Honor.

18 THE COURT: All right. Thank you, sir. You are  
19 excused.

20 Next witness.

21 MR. FRANK: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. FRANK: Plaintiffs' next witness will be  
24 Mr. Lance Boland.

25 THE COURT: All right. Mr. Boland, if you could,

1 please, come forward, sir. Stand right by the court reporter  
2 for a second, a few seconds. We're going to administer an oath  
3 to you and then have you take the witness stand.

4 THE COURTROOM DEPUTY: Mr. Boland, right there, sir.  
5 Face me. Raise your right hand.

6 Do you solemnly swear that the testimony you shall give in  
7 the cause now before this Court shall be the truth, the whole  
8 truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE COURTROOM DEPUTY: Please be seated. Go around,  
11 sir.

12 THE WITNESS: Go around?

13 THE COURTROOM DEPUTY: Yes, sir.

14 Please state your name and spell your last name for the  
15 record.

16 THE WITNESS: Lance Boland, B-o-l-a-n-d.

17 THE COURT: Please proceed.

18 MR. FRANK: Thank you, Your Honor.

19 LANCE BOLAND,  
20 called by and on behalf of Plaintiffs, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FRANK:

23 Q. Mr. Boland, what is your profession?

24 A. I am an infrastructure engineer as well as a firearms  
25 instructor.

1 Q. Can you please describe your firearms instructor  
2 experience?

3 A. I have been teaching since about 2009; professionally,  
4 since 2013. My certifications include basic rifle, pistol,  
5 shotgun; personal protection inside the home and outside the  
6 home; home firearm safety; metallic cartridge reloading --

7 (The court reporter interrupted.)

8 THE WITNESS: Personal protection inside the home,  
9 personal protection outside the home, home firearm safety,  
10 metallic cartridge reloading, shotshell reloading. I'm also a  
11 master instructor for the International Association of Law  
12 Enforcement Firearms Instructors. I also have instruction  
13 directly from Glock training U.S., both in the Glock operators  
14 as well as the Glock Instructor Development workshops.

15 BY MR. FRANK:

16 Q. And do you have any other accreditations for firearms  
17 instruction?

18 A. Can you rephrase the question?

19 Q. Sure. You mentioned that you have -- I believe it's  
20 IALEFI.

21 A. IALEFI?

22 Q. Yes.

23 A. Yeah. That is International Association of Law  
24 Enforcement Firearms Instruction. And I currently hold a  
25 master rating with them.

1 Q. And you operate a firearms training school; is that right?

2 A. That is correct.

3 Q. How many rounds of ammo have you fired in your lifetime  
4 through a semi-automatic pistol? Are you able to estimate  
5 that?

6 A. If you estimate, it would be in the -- over the hundreds  
7 of thousands, probably closer to a million.

8 Q. And how many people have come to your training school  
9 since -- I believe you said it was 2013 --

10 A. 2013.

11 Q. -- roughly?

12 A. 7,400, roughly.

13 Q. And that's on a continuous basis since it opened in 2013?

14 A. That's correct.

15 Q. And do you teach people how to safely handle handguns?

16 A. Yes, we do.

17 Q. Are you familiar with the rules of gun safety?

18 A. Yes, sir. Yes, I am. There is two different sets that  
19 are typically taught. One through the National Rifle  
20 Association. One that is used -- we refer to them as the  
21 Cooper Rules. And our school teaches the Cooper Rules.

22 Q. Can you please explain what the Cooper Rules are?

23 A. Sure. There is a total of four rules. As long as any of  
24 the rules are going to be followed, typically, we can avoid  
25 tragedies. The rules that we follow are:

1 We treat all guns as if they are loaded at all times.

2 We keep the gun pointed in a safe direction. "Never point  
3 your muzzle at anything you do not intend to destroy or kill"  
4 is how we state it.

5 Keep your finger off the trigger until your sights are on  
6 target, and you've made the decision to shoot.

7 And the last one that we follow is know your target and  
8 what's beyond it.

9 Q. And everyone who comes to your training school will  
10 receive that instruction of those four rules?

11 A. It's the first hour of our classes.

12 Q. Do you know what a chamber load indicator is?

13 A. Yes.

14 Q. Can you please describe what you know it to be?

15 A. A chamber load indicator is going to be a mechanical item  
16 on a semi-automatic handgun that, when a cartridge is loaded  
17 into the chamber, it's going to give some type of visual  
18 indication that there is a cartridge that is present inside the  
19 gun, in the chamber.

20 Q. And does the chamber load indicator impact the way that  
21 you teach the four Cooper Rules of gun safety?

22 A. No.

23 Q. Is that because the rules should be observed regardless of  
24 whatever mechanical aspects the firearm might have?

25 A. Regardless of what the gun may be capable of doing in

1     pertaining to safety.

2     Q.     Now, during your experience, your decade or more of  
3     experience of training people and teaching people how to shoot,  
4     have you ever seen people bring guns into your training school  
5     that have chamber load indicators on them?

6     A.     Yes.

7     Q.     And have you ever seen a chamber load indicator on a  
8     firearm fail?

9     A.     Yes.

10    Q.     How many times, roughly, would you say?

11    A.     I've seen it a couple times now.

12    Q.     Are there any particular models of firearm that you've  
13    seen it fail on more than others?

14    A.     The Smith & Wesson M&P Shield, the 9mm, specifically.

15    Q.     And To your knowledge, that is a firearm that's on the  
16    California roster?

17    A.     That is currently on the California roster, yes.

18    Q.     Do you have any experience of your own shooting that  
19    weapon?

20    A.     Yes, I do.

21    Q.     Can you describe your experience using it and what you've  
22    observed?

23    A.     Pertaining to the loaded chamber indicator, when you  
24    chamber a round in the M&P Shield, the loaded chamber indicator  
25    that's painted red on the side, that's facing the shooter,

1 impinges on the sight picture for the gun. So if you're  
2 looking down the sights -- and they typically have what we  
3 refer to as a 3 dot sight -- two dots in the rear, one dot on  
4 the front sight -- that loaded chamber indicator, that's  
5 painted red, comes up in front of that front sight.

6 Q. Does that mean that the user of that firearm will see an  
7 obstruction into what they're looking at through their sights  
8 on the firearm?

9 A. That would be an accurate way of stating that, yes.

10 Q. And that can compromise your ability to use and shoot the  
11 gun safely and accurately; correct?

12 A. Correct.

13 Q. Would you ever teach a student to rely on a chamber load  
14 indicator?

15 A. No.

16 Q. What would be the safest and most foolproof way to verify  
17 whether a semi-automatic firearm has a live round of ammunition  
18 in the chamber?

19 A. For civilian students, we teach them to press check; that  
20 is, push the slide back on the top of their firearm of maybe 8  
21 to 10 millimeters and visually inspect. There is a piece of  
22 brass or a piece of nickel-plated brass in there that indicates  
23 that the chamber is loaded.

24 Q. Do you know what a magazine disconnect mechanism is?

25 A. Yes.



1 Q. Can you please describe?

2 A. Magazine disconnect is going to be a mechanical device  
3 inside of the semi-automatic handgun that should prevent the  
4 gun from firing if a magazine has been removed and interrupts  
5 the firing mechanism.

6 Q. And does a magazine safety disconnect impact how you teach  
7 the four Cooper Rules of gun safety?

8 A. No, it does not.

9 Q. And that is -- is that for the same reason that the rules  
10 should be followed regardless of --

11 A. Rules should be followed regardless, yes.

12 Q. Have you ever observed a MDM mechanism fail on a pistol?

13 A. Yes.

14 Q. Could you please describe?

15 A. I personally -- my personally-owned Sig Sauer P226 MK25  
16 had the magazine disconnect fail inside of it. The most  
17 concerning part of that, that I found, is that, once it had  
18 failed, it wouldn't allow the gun to fire; second, it wouldn't  
19 allow me to put a magazine back in the gun.

20 I do use that gun for defensive purposes. Had I found  
21 myself in a defensive incident, I would not have been able to  
22 get my magazine back in my gun to use it.

23 Q. In your experience teaching the -- I believe you said  
24 7,400 or so people that have come to your firearm school over  
25 the years, are you able to say what percentage of those people

1 were left-handed?

2 A. It's estimated about 10 percent.

3 Q. Is there also a certain percentage of people who come to  
4 your school who are maybe not left-handed but who would be  
5 better off primarily shooting left-handed?

6 A. Yes.

7 Q. And why is that?

8 A. We discovered that some of the students are  
9 cross-dominant, through a very simple test. Some students may  
10 come in, and they're right-handed. And through a simple -- we  
11 refer to it as an eye exam. It's not, by definition. But we  
12 find that their left eye is dominant, but they are  
13 right-handed, meaning they write or handle things with their  
14 right hand.

15 We do encourage those students, in the interest of  
16 marksmanship, to shoot their firearms left-handed, using their  
17 left hand as their strong hand.

18 Q. Are semi-automatic handguns generally ergonomically  
19 configured better for a left-handed shooter or a right-handed  
20 shooter?

21 A. Right-handed shooter.

22 Q. And why is that?

23 A. The controls for the firearm, the slide stop, the magazine  
24 release, on some, if it has a mechanical safety that can be  
25 engaged and disengaged, it's typically done with the thumb on

1 the right hand. If that gun is used in the left hand, those  
2 mechanical controls are going to be covered up by the hand, the  
3 strong hand that is now the left hand.

4 Q. Now, you just mentioned a few of them, but aside from the  
5 trigger on a semi-automatic handgun, would the slide release,  
6 magazine release, and the external safety switch be the main  
7 controls?

8 A. Yes.

9 Q. And, virtually, all semi-automatic handguns are going to  
10 have those, for the most part?

11 A. Some approximation of that, correct. Yes.

12 Q. What have you observed when left-handed shooters come to  
13 your school and begin their process of learning firearms with  
14 firearms that are generally more optimized for a right-handed  
15 shooter?

16 A. It's difficult for them. They struggle.

17 Q. What types of difficulties and struggles arise?

18 A. Most of what we see is, whether it's a left-handed shooter  
19 or it's someone that we're encouraging to shoot left-handed,  
20 the control is being covered up. Now requires us to take that  
21 handgun, sometimes in a loaded condition on the range, and  
22 transfer it from the left hand back into the right hand. So  
23 we're adding steps of manipulation to the gun that, if we had  
24 an ambidextrous firearm or a left-handed firearm, we wouldn't  
25 have to do. So they do struggle to get the gun unloaded, to

1 get it reloaded, and, ultimately, handling it safely.

2 Q. In an defensive encounter, is it true that seconds or  
3 micro-seconds of time can be the difference between being able  
4 to use your firearm successfully, defensively, and potentially  
5 losing your life?

6 A. Yes.

7 Q. How many different models of semi-automatic handguns have  
8 you handled in your lifetime?

9 A. Incalculable. Numerous. Most. Any adjective we want to  
10 add to that.

11 Q. Would that include pretty much every model that's on the  
12 California roster?

13 A. I would be comfortable in saying that.

14 Q. Are there ever any off-roster firearms that can allow the  
15 main controls to be configured ergonomically for the  
16 left-handed shooter?

17 A. Yes.

18 Q. And have you ever recommended those to your clients at  
19 your shooting school?

20 A. Often.

21 Q. What do you tell them about how they might go about trying  
22 to acquire one?

23 A. That they -- with the unsafe Handgun Act being in place in  
24 California, they would have to seek an off-roster handgun  
25 through a private party transfer.

1 Q. Do you own any off-roster handguns?

2 A. I do.

3 Q. Which models do you own?

4 A. The Staccato P from STI. The Glock 43 is another that I  
5 own.

6 Q. And did you acquire that in a private party transfer?

7 A. Yes.

8 Q. Do you recall how much you paid for it?

9 A. For the Staccato, 3,000; and for the 43, a thousand.

10 Q. And are you familiar with roughly what the manufacturer's  
11 suggested retail price is, if you were to walk into a gun store  
12 in a state that didn't have a roster, what you would pay for  
13 those models of firearms?

14 A. The Staccato retails, \$2,100; the 43 about \$450.

15 Q. So you paid significant price markups?

16 A. Yes.

17 Q. And were those firearms in used condition when you  
18 acquired them?

19 A. And they were used when I purchased them, yes.

20 Q. In your decade-plus of experience of training people, have  
21 you trained many state and federal law enforcement officers?

22 A. I have.

23 Q. And when they come to your shooting school, they bring  
24 their own firearms with them; is that correct?

25 A. Yes.

1 Q. Have you ever seen a federal state law enforcement officer  
2 bring a firearm equipped with a magazine disconnect mechanism  
3 to your school?

4 A. No.

5 Q. Have you ever spoken with them about their choices of  
6 firearms?

7 A. I have.

8 Q. And have you spoken with them specifically about the  
9 California roster and what it requires of guns?

10 A. Yes, I have.

11 Q. And what have cops explained to you about the various  
12 problems or issues that they're trying to avoid by not using --

13 A. For those that I talked to --

14 MR. SAROSY: Your Honor, I'm sorry. Objection.  
15 Hearsay.

16 THE COURT: Overruled.

17 THE WITNESS: The ones that I've talked to, the  
18 magazine disconnect has always been a concern, that in a  
19 defensive encounter, if they dropped the magazine and still had  
20 one in the chamber, what we refer to as a tactical reload, the  
21 round in the chamber would be worthless. It wouldn't be able  
22 to be fired. So they do not want magazine disconnects on their  
23 guns.

24 They don't view the loaded chamber indicator as anything  
25 of value because of the steps that they take while handling

1 their own firearms, where they do their own press checks or  
2 they will visually or physically inspect the firearm for if  
3 it's loaded or unloaded, whatever the condition may be.

4 BY MR. FRANK:

5 Q. Have many FBI agents come to your school?

6 A. Yes.

7 Q. Are you familiar with what firearms they're issued?

8 A. Currently, the Glock 17M or the Glock 19M, the M models of  
9 those.

10 Q. Do either of those firearms have a magazine disconnect  
11 mechanism?

12 A. No.

13 MR. FRANK: Thank you, Mr. Boland.

14 I don't have any further questions, Your Honor.

15 THE COURT: I just have one, Mr. Boland.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: You said you have some off-roster  
18 handguns and you obtained them through a private party  
19 transaction.

20 But could you go to a state where they're sold and then  
21 bring that firearm back to California?

22 THE WITNESS: No, Your Honor, I couldn't.

23 THE COURT: Is there any law in California that  
24 prohibits you from doing that?

25 THE WITNESS: I believe it's the law that is going to

1 prohibit me from not being a resident of that state and  
2 purchasing a firearm in that state.

3 THE COURT: I guess that is my question. So it would  
4 be the state -- if you're going to purchase a firearm in the  
5 state, you have to be a resident of that state?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Gotcha. Okay.

8 Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. SAROSY:

11 Q. Good morning, Mr. Boland.

12 A. Good morning, Counsel.

13 Q. My name is Charlie Sarosy. I'm a Deputy Attorney General,  
14 representing the defendant in this case. Thank you for being  
15 here.

16 You were just talking about FBI agents and law enforcement  
17 officers who come to your training school; correct?

18 A. That's correct.

19 Q. Does the average law enforcement officer receive more  
20 training in firearms than the average civilian? Correct?  
21 They're required -- law enforcement officers are required,  
22 before becoming a law enforcement officer, to receive firearms  
23 training?

24 A. Through the academy, roughly 40 hours. The students that  
25 I have go through my academy well exceed 40 hours of training.



1 Q. But students that come to your academy are not required to  
2 come to your academy?

3 A. If they wish to obtain a CCW in the State of California  
4 for Orange County, they are required to go to some type of  
5 training. My school does provide that.

6 Q. Okay. Understood. And you currently own firearms, as you  
7 said; correct?

8 A. That's correct.

9 Q. And you legally purchased those firearms, I'm assuming?

10 A. I have, yes.

11 Q. And you store those firearms at your residence or at your  
12 training school?

13 A. Yes.

14 Q. And how many total firearms do you own, approximately, as  
15 of today?

16 A. 60, maybe 70.

17 Q. And how many would you say of those are handguns?

18 A. Half.

19 Q. And of the firearms that you own, are all of them  
20 operable, meaning they can shoot, they can fire?

21 A. Of the ones I am counting, yes. I do have training aids  
22 that I'm not counting.

23 Q. And of the handguns that you own, are all of them  
24 operable, the ones that you mentioned?

25 A. Yes.

1 Q. So the other half of guns that you own are long guns, such  
2 as rifles and shotguns?

3 A. That would be correct.

4 Q. So you have about 30 or so, give or take, rifles or  
5 shotguns.

6 And how many of the handguns that you own are  
7 semi-automatic pistols?

8 A. Out of the 30 to 35, I would say 25.

9 Q. And then how many are revolvers?

10 A. The other ten.

11 Q. Okay. And then how many -- I think you said you have two  
12 off-roster semi-automatic pistols; correct?

13 A. Correct.

14 Q. And you mentioned the Smith & Wesson M&P 9 Shield.

15 A. Uh-huh.

16 Q. Do you -- is that one of the semi-automatic pistols --

17 A. Yes.

18 Q. -- that you own?

19 And that firearm is on the roster; correct?

20 A. It is.

21 Q. And it has a chamber load indicator and a magazine  
22 disconnect?

23 A. It does.

24 Q. And you mentioned CCW is a concealed carry weapons permit.  
25 Do you have a CCW yourself?

1 A. I do.

2 Q. And that allows you to carry handguns in public --  
3 correct? -- subject to, you know --

4 A. Various regulations and laws, yes, sir.

5 Q. Right. And about how many handguns do you have listed on  
6 your CCW that allows you to carry them in public?

7 A. I believe 11.

8 Q. And you, yourself, are a right-handed shooter; correct?

9 A. I am.

10 Q. And you were talking about right-handed shooters who could  
11 be cross-dominant, so that it would be better for them to be  
12 left-handed -- or shoot left-handed; correct?

13 A. Correct.

14 Q. I mean, the same could be true for left-handed folks who  
15 come to your school. They could also be cross-dominant and  
16 shoot right-handed?

17 A. Be left-eye dominant and right-handed, or right-eye  
18 dominant and left-handed. It goes both ways, yes.

19 Q. Okay. And when you train your students, does -- is it --  
20 the students that you have, are they the firearm owner  
21 themselves?

22 A. They may be the future firearm owner, meaning that they  
23 haven't made a purchase. They're still deciding if they want  
24 to purchase, or they're looking for assistance on the right  
25 firearm to purchase.

1 Q. Okay. But not everyone who will or does have access to a  
2 firearm comes to your training; correct?

3 A. Restate the question.

4 Q. Sure. It's only the person who owns a firearm or is going  
5 to own a firearm who goes to your training school; correct?

6 A. I would say the majority would probably fall into that  
7 category.

8 Q. Most people do not -- most of your students do not bring,  
9 let's say, other people in their household to your training?

10 A. That does happen. That does happen, where you have a head  
11 of household that has decided to purchase or looking for a  
12 future purchase, that will bring all members of their household  
13 because that gun is going to be in their household. And  
14 whether they become the users of it, irrelevant. They want to  
15 make sure that they understand what the safety rules are. They  
16 want training on it regardless if they're going to become a  
17 user of that firearm or not.

18 Q. Would that include children?

19 A. It does, yes.

20 Q. And you can't speak to whether a child is actually  
21 understanding all of your training; correct?

22 A. I have children myself. I have an 8-year-old and a  
23 12-year-old son that live with me.

24 Q. But the children that attend your training, you don't --  
25 you can't know for sure whether they're understanding the

1 training that you are providing?

2 A. Well, I can't -- yeah, I'll agree with that.

3 Q. And you prefer not to purchase more off-roster firearms  
4 via a private party transaction, but, obviously, you are aware  
5 that you are legally allowed to do so because you have done so?

6 A. At great expense, yes.

7 Q. But you have done so; right?

8 A. I have done so, yes.

9 Q. And since this lawsuit was filed on August 1st, have you  
10 purchased more semi-automatic pistols from then until now?

11 A. In the interest of my training school, I have, yes.

12 Q. But not for yourself defense?

13 A. Not for anything that I've put on my permit, no.

14 MR. SAROSY: That's all I have. Thank you,  
15 Mr. Boland.

16 THE COURT: Thank you, Counsel.

17 Mr. Boland?

18 THE WITNESS: Your Honor.

19 THE COURT: Have ever seen a handgun with  
20 microstamping capability?

21 THE WITNESS: I have not, Your Honor, no.

22 THE COURT: Are you aware of any gun manufacturer  
23 that implements a microstamping capability on a firearm?

24 THE WITNESS: I am not personally aware, Your Honor,  
25 no, I'm not.

1 THE COURT: Do you have any opinion on why that is?

2 THE WITNESS: Why they don't include it? I have an  
3 opinion on it of -- the technology is difficult to implement.  
4 It's unreliable. I have personal opinion on it where I would  
5 be concerned of taking a firearm to the range to practice or to  
6 train that has microstamping on it in the fear that that brass  
7 that is left behind on the floor of the range or on the ground  
8 of the range may be picked up and used nefariously. That would  
9 be a concern.

10 THE COURT: Can you explain that a little bit more?

11 THE WITNESS: If that was dropped at a crime scene  
12 and then law enforcement picks that up, that would be concern  
13 that now that serial number comes back to me on a crime scene I  
14 was definitely not at.

15 I guess a global concern would be the over-utilization of  
16 law enforcement resources tracking people like that down. I  
17 have cohorts that are with LAPD, with homicide, that they  
18 already show up on scenes and there's multiple forms of brass  
19 that have been thrown down for people involved in shootings  
20 that contaminate the crime scene with evidence. I believe that  
21 this would just lend itself to that.

22 THE COURT: Okay. Thank you.

23 Any further questions?

24 MR. FRANK: Yes, Your Honor. Thank you.

25 REDIRECT EXAMINATION

1 BY MR. FRANK:

2 Q. Mr. Boland, I believe earlier and just now you spoke a  
3 little bit about reloading ammunition.

4 Can you describe what that means, to reload ammunition?

5 A. For reloading ammunition, we pick up expended casings,  
6 brass or nickel-plated brass, off of the ground at the range.  
7 We bring that back. It goes through a sorting process to make  
8 sure that we have -- for example, we're going to reload 9mm,  
9 9X19, that we would take that -- remove the old primer. I  
10 believe the microstamping requirement leaves it on the primer  
11 and the case, so there is no way to remove that if that  
12 existed.

13 We wash, clean the brass, size it. Then we put a new  
14 primer back in, the new powder back in, place a bullet on top  
15 and reseal it, and then check it for quality control.

16 Q. So you -- when you reload ammo, it sounds like you need  
17 multiple different components to do that. I believe you  
18 mentioned --

19 A. Correct.

20 Q. -- you need brass, primer, gun powder, and then a  
21 projectile, the actual bullet?

22 A. That's correct.

23 (The court reporter interrupted.)

24 BY MR. FRANK:

25 Q. What are the components that you need to reload a

1 cartridge?

2 A. You would have a piece of brass, referred to as a casing;  
3 a new primer; powder, gun powder, smokeless gun powder,  
4 typically; and a projectile, a bullet.

5 Q. And would you need some tools or some kind of apparatus to  
6 actually put those all together?

7 A. That's correct.

8 Q. And are those easily obtainable? Are they expensive?

9 A. They're -- well, there is a range. They start from, maybe  
10 a hundred to \$200 to tens of thousands, when we get to  
11 commercial level.

12 Q. So a basic setup to allow you to reload your own  
13 ammunition would cost, maybe, a few hundred dollars?

14 A. If that, yes.

15 Q. And you said earlier that you can just pick up brass from  
16 a range and then you can process that so that you could reuse  
17 it to reload your own ammo?

18 A. That's correct.

19 Q. So, theoretically, if there were a microstamped case at a  
20 shooting range that had a serial number on it, anyone could  
21 pick that up and take it and reload their own ammunition with  
22 it; right?

23 A. Yes.

24 MR. FRANK: Thank you, Your Honor.

25 THE COURT: Very well.



1 Anything further?

2 MR. SAROSY: Just one question, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. SAROSY:

5 Q. Mr. Boland, on the cartridge --

6 A. Uh-huh.

7 Q. -- casing issue we were just taking about, your students  
8 typically don't go out and pick up their own cartridge cases  
9 after firing?

10 A. I would say several of mine do.

11 Q. So the one's that are left behind are left by the other  
12 students that do not pick them up?

13 A. Correct.

14 MR. SAROSY: Okay. Thank you.

15 THE COURT: Sir, you may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Next witness.

18 MR. FRANK: Your Honor, the Plaintiffs' next witness  
19 is Mr. Reno May.

20 THE COURTROOM DEPUTY: Face me. Raise your right  
21 hand.

22 Do you solemnly swear that the testimony you shall give in  
23 the cause now before this Court shall be the truth, the whole  
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: Yes, sir.

1 THE COURTROOM DEPUTY: Please be seated.  
2 Please state your name and spell your last name for the  
3 record.

4 THE WITNESS: Reno May. Last name, M-a-y.

5 THE COURT: Please proceed.

6 MR. FRANK: Thank you, Your Honor.

7 **RENO MAY,**  
8 **called by and on behalf of Plaintiffs, testified as follows:**

9 DIRECT EXAMINATION

10 BY MR. FRANK:

11 Q. Mr. May, how many firearms do you own, roughly?

12 A. Fifteen to twenty, I believe.

13 Q. And how many of those are handguns?

14 A. I would say, roughly, half of them.

15 Q. Now, are there any off-roster models of handguns that you  
16 have been interested in purchasing but have not been able to?

17 A. Yes, sir.

18 Q. Can you please name those?

19 A. One of them in specific that I would like to acquire would  
20 be either a Staccato, either the C or P series, I believe, and  
21 then some Atlas firearms, both of which are 2011-style  
22 firearms, and then in addition to that, small subcompact  
23 firearms that would be more suitable for concealed carry.

24 Q. What would those models that are more suitable for  
25 concealed carry be?

1 A. Things like the Shield 2.0; the Ruger -- I think it is the  
2 LCP MAX; and then the Sig Sauer P365.

3 Q. And would those be for concealed carry purposes?

4 A. Correct.

5 Q. You have a California-issued concealed carry weapons  
6 permit?

7 A. Yes. I've had a CCW in Sonoma County for approximately  
8 four years now.

9 Q. And what efforts have you undertaken to try to locate  
10 these models that you mentioned?

11 A. Unfortunately, due to the gray market, it is very  
12 difficult to find one. You have to go on popular websites like  
13 Cal Guns, possibly Armslist, and find someone who currently  
14 owns one in the State of California. Usually, law enforcement  
15 who purchased one. And when you do find one, it is usually  
16 two, potentially three times the asking price of a brand new  
17 firearm in another state.

18 Q. So there is significant price margin markups in the  
19 secondary gray market if you are searching for one of these  
20 types of pistols?

21 A. Because of the high demand and the very low supply,  
22 usually being supplied by law enforcement or people who move  
23 from out of state into this state with one of those firearms,  
24 it's hard to come by, and it is very expensive.

25 Q. In addition to significant price markups, are there other

1 issues that arise at times?

2 A. There have been times where I found a firearm that I was  
3 interested and that I would be interested in purchasing due to  
4 the price, but because of the State of California laws, I would  
5 have to drive to a store to meet them. California, sometimes  
6 the drive can be eight hours, like the drive that I took to get  
7 down here. Eight hours there, eight hours back. Ten days  
8 later or more, eight hours there, eight hours back. It can be  
9 very difficult to acquire, even if it's not just monetarily.

10 Q. And of the models that you mentioned that you would likely  
11 carry -- I believe you mentioned there was a model from the  
12 manufacturer Ruger, another one from Sig Sauer.

13 A. Uh-huh.

14 Q. What is it about those particular models that you prefer  
15 to -- or rather, what features of those models are desirable to  
16 you?

17 A. A lot of them, they are very reliable from the factory. I  
18 have owned firearms that are on the California handgun roster  
19 that fill a similar role, but the triggers are undesirable, and  
20 some of the features on them aren't modern that I would like to  
21 have on a more modern firearm. Them being much smaller makes  
22 them much more suitable to carry as well.

23 Q. So would it be fair to say that, due to distance and price  
24 and limited availability, you've been unable to locate these  
25 models that you would use for personal defense?

1 A. Correct.

2 MR. FRANK: Thank you, Mr. May.

3 Thank you, Your Honor. I don't have any further  
4 questions.

5 THE COURT: Very well.

6 CROSS-EXAMINATION

7 BY MR. SAROSY:

8 Q. Good morning, Mr. May. My name is Charlie Sarosy. I'm a  
9 Deputy Attorney General representing the defendant in this  
10 case. Thank you for being here and making the drive.

11 A. Good morning.

12 Q. You currently own firearms, as you said; correct?

13 A. Correct.

14 Q. And I'm assuming you legally purchased those firearms;  
15 correct?

16 A. Yes, sir.

17 Q. And do you store those firearms at your residence?

18 A. Correct.

19 Q. And I think you said you have about 15 to 20 firearms that  
20 you currently own?

21 A. Correct.

22 Q. And about how many of those are handguns?

23 A. I believe about ten of them, about half.

24 Q. About ten. Okay.

25 And are all of the firearms that you own operable, meaning

1 they can shoot?

2 A. Some of them are in disassembled states, but they  
3 otherwise would function if assembled.

4 Q. And of the handguns that you own, how many of them are  
5 operable, as in not disassembled?

6 A. I would say all of them are operable.

7 Q. Okay. So if they are currently all operable, you could  
8 use any one of those to defend yourself, if you needed to?

9 A. They all do fire bullets, so, yes.

10 Q. Of the handguns that you own, how many are semi-automatic  
11 pistols?

12 A. I believe six, but I would have to spend more time to,  
13 like, make sure that that's -- six, approximately.

14 Q. And the remaining handguns that you have, are they  
15 revolvers or single shot pistols?

16 A. Some of them are single shot pistols.

17 Q. Okay. And of the semi-automatic pistols that you own, how  
18 many are off-roster handguns?

19 A. It's hard to say because I believe some of the firearms  
20 that I own were at one point on the roster but are no longer.

21 Q. Okay. About you have previously purchased off-roster  
22 firearms; correct?

23 A. Correct.

24 Q. Through a private party transaction?

25 A. Correct.

1 Q. And you mentioned before that you have on-roster handguns  
2 that are similar to the off-roster ones you would like to  
3 purchase?

4 A. Correct.

5 Q. So what are --

6 A. Or have had. I have sold them since.

7 Q. Okay. What are -- can you -- do you remember what those  
8 on-roster handguns are?

9 A. The one that I sold was the Smith & Wesson Shield, which  
10 has the magazine disconnect with the loaded chamber indicator  
11 and the physical safety, that is currently on the handgun  
12 roster in a 9mm.

13 Q. The M&P?

14 A. The M&P Shield, yeah. I sold that firearm because, at one  
15 point, I had the loaded chamber indicator break, and it no  
16 longer stuck up anymore because the mechanism that causes it to  
17 stick up is a very small sliver --

18 Q. I'm good. Thank you. I appreciate it.

19 A. Uh-huh.

20 Q. I just wanted to know which ones. Were there other ones?

21 A. My memory on which firearms I may have had and don't have  
22 anymore that I sold legally, I'm sorry, I don't --

23 Q. But you previously did have ones that are similar to the  
24 ones that you want to buy?

25 A. Correct.

1 Q. And you mentioned that you have a CCW?

2 A. Correct.

3 Q. Meaning you can carry a handgun in public, subject to  
4 other regulations and laws; correct?

5 A. Yes, correct.

6 Q. And about how many handguns do you have listed on your  
7 CCW?

8 A. My county allows three, and I have two that are  
9 currently -- well, actually I do have three that are currently  
10 on the CCW.

11 Q. And the two or -- sorry. You said two or three?

12 A. I'm allowed three, and I currently have three on my  
13 permit.

14 Q. Okay. And those three are not -- are they subcompact  
15 or --

16 A. They are a variety of sizes. Because I was limited to  
17 three pistols, I chose a microcompact firearm, a mid-sized  
18 firearm, and a much larger firearm that would be suitable for  
19 backcountry threats.

20 Q. And all three are concealable --

21 A. Correct.

22 Q. -- because you have them on your CCW?

23 A. Uh-huh.

24 Q. And I think you said two of those are not compact;  
25 correct?



1 A. The Glock 19 is advertised and marketed as a compact  
2 firearm, so two of them would be considered compact concealed  
3 carry firearms.

4 Q. Okay. And you are a right-handed shooter; correct?

5 A. Correct. I am right-handed, but I am left-eye dominant.

6 Q. Okay. And since the lawsuit was filed on August 1, have  
7 you purchased any handguns?

8 A. Yes.

9 Q. And you have manufactured your own single shot pistols;  
10 correct?

11 A. I have manufactured my own single shot pistols.

12 Q. And you have received serial numbers for those single shot  
13 pistols from the California Department of Justice; correct?

14 A. After about a year, my --

15 Q. It's just a "Yes" or "No," Mr. May.

16 A. Yes.

17 Q. Thank you. And I understand you prefer not to purchase  
18 more off-roster handguns via a private party transaction, but  
19 you have done so in the past; correct?

20 A. In the past.

21 Q. Okay. All right.

22 MR. SAROSY: That's all I have. Thank you, Mr. May.

23 THE COURT: Anything further?

24 MR. FRANK: No, Your Honor.

25 THE COURT: Sir, you can step down. You are excused.

1           why don't we give our court reporter a break, and we'll  
2 pick back up in ten minutes.

3           (A brief recess was taken.)

4           THE COURTROOM DEPUTY: Please come to order. This  
5 Court is again in session.

6           THE COURT: All right. Are we ready to for the next  
7 witness?

8           MR. DALE: We are, Your Honor. We were having a  
9 discussion, though, off the record about the possibility of  
10 allowing our remote experts to listen into the other expert's  
11 testimony, if the Court would be willing to entertain that.

12          THE COURT: I would.

13          MR. DALE: Okay. Thank you, Your Honor.

14          MR. SAROSY: Thank you.

15          MR. BRADY: Plaintiffs would like to call Mr. Salam  
16 Fatohi.

17          THE COURT: Very well.

18          THE COURTROOM DEPUTY: Mr. Fatohi, raise your right  
19 hand, sir.

20           Do you solemnly swear that the testimony you shall give in  
21 the cause now before this Court shall be the truth, the whole  
22 truth, and nothing but the truth, so help you God?

23          THE WITNESS: I do.

24          THE COURTROOM DEPUTY: Please state your name and  
25 spell your last name for the record.

1 THE WITNESS: Salam Fatohi. Last name is F, as in  
2 "Frank"; A, as is "apple"; T, as in "Tom"; O, as in "Oscar"; H,  
3 as in "hotel"; I, as in "igloo."

4 THE COURT: Please proceed.

5 MR. BRADY: Thank you, Your Honor.

6 If you have any issues understanding what he's saying,  
7 please let me know. Because it is a little muffled; right?

8 THE COURT REPORTER: Yes.

9 MR. BRADY: The sound, right.

10 THE WITNESS: Sorry about that. I will try to speak  
11 up, too.

12 MR. BRADY: Yeah, there's a little -- I don't know if  
13 it's muffled or -- so if you could speak slowly and strongly  
14 for the court reporter, we would appreciate that, please.

15 THE WITNESS: Absolutely.

16 **SALAM FATOHI,**  
17 **called by and on behalf of Plaintiffs, testified as follows:**

18 **DIRECT EXAMINATION**

19 BY MR. BRADY:

20 Q. Good morning. Thank you for joining us, Mr. Fatohi.

21 Can you tell us who your employer is, please?

22 A. Yes. I work for the National Shooting Sports Foundation.

23 Q. The National Shooting Sports Foundation. Is it also known  
24 as NSSF?

25 A. Yes. It is a mouthful, so that is it for short.

1 Q. So what is NSSF?

2 A. So we are the trade association for the firearm ammunition  
3 industry.

4 Q. And what is your job title at NSSF?

5 A. I am the manager of research.

6 Q. What sort of work do you do as the research manager at  
7 NSSF?

8 A. So I follow very closely the firearm ammunition industry  
9 performance and trainings and also keep up-to-date on  
10 legislative and policy research.

11 Q. Are you familiar with California's Unsafe Handgun Act?

12 A. Yes. It contains a roster --

13 Q. I'm sorry. I was going to -- were you about to say  
14 something to my last question or -- my question was: Are you  
15 familiar with California's Unsafe Handgun Act?

16 A. Yes. I'm sorry. Someone started speaking, so I stopped  
17 speaking.

18 Q. Okay. Was it a, yes, you are familiar with California's  
19 Unsafe Handgun Act?

20 A. Yes. Yes, I am.

21 Q. Can you explain, basically, what your understanding is?

22 A. Yes. Absolutely. So from my understanding, California  
23 maintains a roster of handguns certified for sale, and those  
24 are handguns that are allowed to be commercially sold in the  
25 state. In order to be on the roster, the handgun has to either

1 be grandfathered in or have a -- three different  
2 characteristics on them which are to be tactile, loaded chamber  
3 indicator, magazine disconnect, and microstamping technology.

4 Q. Okay. Do you know what a chamber load indicator is?

5 A. Yes, I do.

6 Q. Can you explain what your understanding is?

7 A. Yes. So a loaded chamber indicator is, when a handgun has  
8 a round in the chamber, there will be a mechanical function on  
9 the pistol for a feature to designate that there is a round  
10 inside that chamber.

11 Q. Okay. Do you know what a magazine disconnect mechanism  
12 is?

13 A. Yes. It's a feature on the handgun that prevents the  
14 firearm from firing unless the magazine is seated flush inside  
15 the handgun.

16 Q. Do you know what microstamping is?

17 A. Yes.

18 Q. Can you explain, just basic level, what your understanding  
19 of microstamping is?

20 A. Absolutely. So my understanding of microstamping is that  
21 it's a technology implemented into a firearm that, during the  
22 firing sequence of that handgun, would leave a marking on the  
23 expected or -- I'm sorry -- ejected shell casing of that round  
24 that was just fired.

25 Q. How did you become familiar with the Unsafe Handgun Act?

1 A. So the NSSF on our website keeps a number of fact sheets  
2 up-to-date. It is my job to keep those fact sheets up-to-date.  
3 One of the fact sheets is on microstamping -- one of those fact  
4 sheets is a going to be a fact sheet on microstamping. And in  
5 review of not only the history of all the ins and outs of  
6 microstamping, we also reviewed the legislative actions that  
7 have been done of microstamping, which then brought in the UHA.

8 Q. So you reviewed the roster as part of your work at NSSF to  
9 provide facts about it? Is that accurate?

10 A. Yes.

11 Q. And what sort of facts --

12 A. In review --

13 Q. I'm sorry?

14 A. Go ahead. I cut you off. I apologize.

15 Q. It's okay. Do you have anything additional to add or --

16 A. Yes. So as part of my duties in reviewing that fact sheet  
17 to make sure it's up-to-date, we look for any changes that  
18 might be available. And one of those is an annual review of  
19 the UHA. And what I would do is do a thorough analysis of the  
20 handguns available for sale in California, just kind of review  
21 and try to find a true number of how many handguns are actually  
22 on the list.

23 Q. A true number of how many handguns are on the roster? Is  
24 that what you're saying?

25 A. Yes.

1 Q. Can't you just go look at the roster and see the number of  
2 them and count them?

3 A. So it's a little bit more in-depth than that. So what I  
4 will do is, because there isn't an availability to just  
5 download a current list, we would go through and manually pull  
6 all of the firearms that are on the roster. I then go through  
7 a review process that is reviewed typically by major  
8 manufacturers in the industry for logic check to see how many  
9 of these are actually on there.

10 The reason why I do that is because the roster has certain  
11 rules and regulations surrounding it. And if there are two  
12 identical pistols on the roster but one is featured with a  
13 certain cosmetic, you know, setup by a certain cosmetic  
14 feature, then it's treated as a totally different handgun. And  
15 so you could have two of the exact same pistols available on  
16 the roster, but it's actually just one pistol with two  
17 different cosmetic styles.

18 And so that's why I go through it manually to try to find  
19 the true number of how many handguns are actually on the roster  
20 available for sale.

21 Q. So in making what you consider to be accurate count of how  
22 many handguns are on the roster, you are essentially grouping  
23 models that are separate, listed as separate models on the  
24 roster, as a single model if they are similar or if they're the  
25 same other than cosmetic features. Is that fair to say?

1 A. That's correct. If they differ in any which way  
2 mechanically or by design, say, by a certain barrel length  
3 versus another or different chambering, then they are a  
4 different handgun. Or if they are the exact same chambering  
5 design, overall length, barrel length, all of those key  
6 features of the design, they only differ based on, say, a  
7 Stericoat, a coloring, applied to one versus the other, then I  
8 would treat those two models as one model in my count.

9 Q. And when is the last time you did this assessment of the  
10 roster?

11 A. The last time we had gone through this -- and I'll admit  
12 it is a little bit out of date -- I believe is fourth quarter  
13 in 2020.

14 Q. And do you recall how many firearms the roster had listed  
15 claimed were separate handgun models at that time?

16 A. To the best of my knowledge, I believe, it was a little  
17 over 900 at the time that were reported on the front page of  
18 the website. But during my analysis, I found that only about  
19 half of them were really individual designs.

20 Q. That was my next question. So the roster, when you  
21 reviewed it, had approximately 900 separate handgun models  
22 listed? And after doing your analysis, where you lumped  
23 together models that the roster treated as separately but you  
24 determined were, essentially, the same model because they only  
25 were different with respect to cosmetic features like color or



1 coating, that it was about half that?

2 A. That's correct.

3 Q. Mr. Fatohi, can you tell me what see on your screen?

4 A. Yeah, that is the decertified handgun model list.

5 Q. And what is your understanding of this list?

6 A. So these were handguns that were once on the approved  
7 handguns-for-sale roster and had subsequently fallen off due to  
8 a number of reasons.

9 Q. Do you know any the reasons why handguns would come off of  
10 the roster?

11 A. So to my knowledge, it can really only be one of three  
12 reasons. First and foremost, the manufacturer cannot certify  
13 that the design has not changed in any which way. Or the  
14 manufacturer decides not to recertify and pay the annual fee.  
15 I believe it's \$200. Lastly, the State of California can, upon  
16 further analysis, declare that the handgun is no longer fit for  
17 sale on the handgun-available-for-sale roster.

18 MR. BRADY: I would like to enter this as Exhibit 4?

19 THE COURT: Any objection?

20 MR. SAROSY: No, Your Honor.

21 THE COURT: Exhibit 4 will be received into evidence.

22 (Exhibit 4 was received into evidence.)

23 BY MR. BRADY:

24 Q. Mr. Fatohi, you discussed the reasons why handguns fall  
25 off the roster; right? You gave three separate reasons; is

1 that right?

2 A. Uh-huh.

3 Q. And are you familiar with any instances of -- recent  
4 incidences of firearms falling off the roster for specific  
5 reasons? Do you have any examples of a manufacturer who did  
6 not want their firearm to fall off the roster and it did?

7 MR. SAROSY: Objection, Your Honor. Lacks  
8 foundation.

9 THE COURT: If you know, sir.

10 BY MR. BRADY:

11 Q. Do you understand the question, Mr. Fatohi?

12 A. I'm sorry. I missed what was said after, and I didn't  
13 want to interrupt.

14 Q. If you understood the question, you can answer it;  
15 otherwise, I could restate.

16 A. Yes, please restate.

17 Q. Okay. So the question is: Are you aware of any  
18 manufacturer whose firearm fell off the roster for any specific  
19 reason? Are you aware of the reasons that they actually fell  
20 off?

21 A. So I'm aware of H&K, which had a number of firearms that  
22 were removed. The explicit reason of why, I can only safely  
23 assume that there was improvement to manufacturing and safety  
24 that then would disqualify that handgun from staying on the  
25 roster. The reason why is because the requirement of the

1 roster is that no changes are made whatsoever to any part,  
2 whether it's manufacturing or sourcing or improvement to that  
3 design.

4 MR. SAROSY: Your Honor, I am going to renew my  
5 objection. He said, "I assume." I am not sure what the  
6 foundation is here.

7 THE COURT: Duly noted. Overruled.

8 BY MR. BRADY:

9 Q. So, Mr. Fatohi, have you seen the article that is on your  
10 screen?

11 A. Yes, I have.

12 Q. And is this what you were referring to when you were  
13 saying that H&K had handguns fall off the roster or that it  
14 removed models off the roster?

15 A. Yes.

16 Q. And it was your testimony, correct, that you do not know  
17 why they fell off the roster but you would have no reason to  
18 believe that they fell off the roster for any other reason  
19 other than they changed some parts?

20 A. Yes. The only thing I could really kind of surmise,  
21 unless the State decided to -- unless the State decided that,  
22 upon further review, they declared them unsafe, which I am not  
23 aware of, then the fallback would have to be that H&K had made  
24 some sort of manufacturing improvement, which manufacturers  
25 routinely do, whether it's for safety or manufacturing

1 efficiency. A part could have been changed on H&K's line,  
2 which then dropped it off of the roster.

3 Q. Are you aware of any other specific instances of a  
4 manufacturer having their firearm removed from the roster  
5 without their desire for it to be removed from the roster? Let  
6 me strike that.

7 I shouldn't say "any other," because we concluded that we  
8 don't know if that happened with H&K. But are you aware of any  
9 manufacturers where you know the reason that their firearm was  
10 removed from the roster involuntarily?

11 A. So I am aware of an instance with Ruger, which had a  
12 model -- their FNP removed. And in order to be put back on the  
13 roster and available for sale, Ruger had to then bring back the  
14 original design of that firearm without the manufacturing  
15 improvements that were put on to it.

16 Q. Do you know what those manufacturing improvements were  
17 that Ruger made, that made it -- their handgun fall off the  
18 roster, get removed from the roster?

19 A. To be honest, at this time, I'm not aware.

20 Q. Okay. So you don't know whether it was -- if it was minor  
21 changes, major changes?

22 A. No. Because of the design -- it's pretty established. I  
23 would have to assume it was something for manufacturing  
24 efficiency and not a major contributor to the overall function  
25 and form of the firearm.

1 Q. And your review -- actually, strike that.

2 I'd like to enter this as Exhibit 5, the article.

3 THE COURT: Any objection?

4 MR. SAROSY: Objection, Your Honor. Hearsay.

5 THE COURT: Sustained.

6 BY MR. BRADY:

7 Q. In your work as NSSF, do you stay updated about trends in  
8 the national firearm marketplace?

9 A. Yes, I do. So I routinely, as part of my duty, look over  
10 articles, peer-reviewed articles, magazines related to firearm  
11 research, and those publications always have the latest,  
12 greatest firearms, whether it's for advertising or a feature on  
13 the firearm that is coming out on the market.

14 Q. So in doing that work, you've gained a knowledge about  
15 what handgun models are being offered commercially on a  
16 nationwide level; is that correct?

17 A. Yes. I have a -- I would say I have a pretty firm grasp  
18 on what the latest and greatest is.

19 Q. Are there any models that you're aware of that are offered  
20 commercially on a national level that are not offered in  
21 California?

22 A. Yes. So, primarily, I would say, probably, one of the  
23 most popular pistols out of there are Glocks 5th Generation  
24 offerings. And to my knowledge, only the 3rd Gen is available  
25 for sale in commercial markets in California.

1 Q. I'm sorry. Did you say Glock -- what was it? Gen5?

2 A. Yes. The Gen5 is probably the most popular handguns,  
3 nationally, right now.

4 Q. And the Glock Gen5 is not on the California roster?

5 A. Correct. Only the Gen3 is available.

6 Q. Was there a Gen4?

7 A. Yes.

8 Q. Was the Gen4 ever on the California roster, to your  
9 knowledge?

10 A. I do not believe it was.

11 Q. So the Glock Gen3 is on the California roster, but Glock  
12 is now making a Gen5 that is available nationally?

13 A. Yes. The manufacturer of the Glock has since made  
14 improvements in manufacturing efficiency that has led to two  
15 newer generations being out now. So the Gen3 is still only the  
16 latest and greatest ending up on the roster, commercially, in  
17 California.

18 THE COURT: Counsel, would you follow up on that,  
19 what manufacturing efficiencies or if there is any other  
20 improvements besides manufacturing efficiencies from the 3rd  
21 Gen to the 5th.

22 THE WITNESS: I'm sorry. Say it again.

23 MR. BRADY: Absolutely, Your Honor.

24 Q. Did you hear His Honor's question, Mr. Fatohi?

25 A. Only bits and pieces. I apologize.

1 Q. So essentially what he's asking is: Are you familiar with  
2 what improvements -- you called them improvements -- were made  
3 from the Gen3 to the Gen5 to cause Glock to make it a newer --  
4 a different Gen, if you will?

5 A. So on the generational differences between the 3, 4, and  
6 5, there are external features, but then also the materials  
7 used to make various parts internally and externally are  
8 continuously updated, which is why Glock makes the generations  
9 the way that they do. As they get better materials, better  
10 ways to manufacturer materials, and also external features,  
11 that is really what separates the Gens 3, 4, and 5 out.

12 Q. And what's the reason for change of materials. You say  
13 "better." Better in what regard?

14 A. So it's really up to kind of the individual part. But,  
15 typically, it's a durability and efficiency to manufacturer  
16 that part. So if it costs less money, is as durable, more  
17 durable, or able to manufacturer that part faster based on the  
18 material used, those all go into manufacturing efficiency.

19 Q. In your experience in reviewing the national handgun  
20 marketplace, are chamber load indicators popular on  
21 commercially sold handguns outside of California?

22 A. No, they are not.

23 Q. Are you aware of any popular handgun models, that are  
24 commercially available outside of California, that have a  
25 chamber load indicator?

1 A. So there are some that have a form of -- so, for example,  
2 Smith & Wesson M&Ps have a recessed drilled-out hole at the  
3 base of the barrel that will allow for visual inspection, but I  
4 believe that California calls for a tactile load chamber  
5 indicator, which is not popular at all on the national market.

6 Q. And beyond that, you're essentially saying some  
7 manufacturers will have a hole where you can look into the  
8 action to see if it's loaded. Is that accurate?

9 A. That's correct.

10 Q. How, in your estimation -- is that the majority of them?  
11 Or is that just a few?

12 A. I would say for the ones that do have any form of loaded  
13 chamber indicator, that is the only form that is available  
14 right now.

15 Q. And what I'm asking is, in the universe of all handguns,  
16 would it be a majority or a minority that have that hole for  
17 you to look into the chamber?

18 A. A minority. And even less so for a tactile version.

19 THE COURT: And why is that, sir? Why is that not  
20 popular?

21 THE WITNESS: It's simply not something that is  
22 desired by the market.

23 THE COURT: I didn't hear that answer.

24 BY MR. BRADY:

25 Q. Can you repeat your answer, Mr. Fatohi?



1 A. I'm sorry about that. I said, it is simply not something  
2 that's desired by the market.

3 THE COURT: Do you know why it's not desired?

4 THE WITNESS: I can only assume, which I don't want  
5 to. What kind of leads me to my answer is, because it's not  
6 something that is desired by the market, manufacturers will not  
7 spend the time and money and resources to implement those  
8 designs into their manufacturing process for their pistols.

9 THE COURT: Am I to assume, then, you are not aware  
10 of any reason as far as the structure, the use, or functioning  
11 of the firearm why that is not included? If you understand my  
12 question.

13 THE WITNESS: I'm sorry. Could you say that again?

14 THE COURT: I am just trying to get an understanding  
15 of why the market or people don't want a CLI on it, and does it  
16 have -- it doesn't sound like it has anything to do with the  
17 functioning of the weapon, to your knowledge, as opposed to --  
18 it sounds like it's just a cost or it's a feature that people  
19 don't care about.

20 THE WITNESS: I don't think that it's a feature that  
21 is really utilized on a wide margin. From my experience and my  
22 exposure in the industry, it's not implemented because the  
23 consumer base just doesn't really use it. We don't see a  
24 reason for it.

25 THE COURT: In any of your dealings or experience,

1 have you heard that the indicator, on occasion, can actually  
2 make it difficult for the user of the firearm to focus on the  
3 target?

4 THE WITNESS: With the tactile ones, yes, because it  
5 is a physical piece that kind of draws itself up from the top  
6 of the slide. And depending on the design of the pistol, it  
7 could obscure or distract the shooter, shooter sights.

8 THE COURT: Thank you.

9 BY MR. BRADY:

10 Q. Are magazine disconnect mechanisms popular on handguns  
11 commercially sold outside of California, to your knowledge?

12 A. The only instances of magazine safety, that I'm aware of,  
13 are primarily in recreational rimfire handguns. The vast  
14 majority of handguns are, of course, centerfire, and centerfire  
15 handguns really do not have that magazine safety implement and  
16 other technology.

17 Q. I'm sorry. Did you say that in some "rimfire"? Is that  
18 the word you used?

19 A. Yes. Rimfire 22 handguns.

20 Q. Okay. And, to your knowledge, rimfire handguns and  
21 centerfire handguns are treated differently on the roster? Is  
22 that your understanding?

23 A. I would say that they are treated differently from a  
24 manufacturing standpoint. Primarily, manufacturers, if they do  
25 implement a magazine safety, it is almost only for current

1 market and current products only implemented in rimfire  
2 handguns, which are largely a recreational product, versus a  
3 centerfire product, that is largely duty or self-defense.

4 Q. So it's fair to say that semi-automatic centerfire  
5 handguns that are sold outside of California generally do not  
6 come with a magazine disconnect mechanism?

7 A. That's correct.

8 Q. Do you see an image of a handgun on your screen,  
9 Mr. Fatohi?

10 A. Yes. I am looking at the Shield M&P 9.

11 Q. Okay.

12 A. I believe this is California-compliant model.

13 Q. You just answered my next question. So you are familiar  
14 with this handgun model then?

15 A. Yes. Yes, I am.

16 Q. To your knowledge -- and you said -- I'm sorry. You  
17 described it as -- it is the -- what model?

18 A. That appears to be the California-compliant model.

19 Q. The California-compliant model.

20 Sorry. I'm trying to zoom in on this here.

21 So under Product Features, it says, "A  
22 California-compliant tactile loaded chamber indicator and  
23 magazine safety."

24 Is that what you're referring to when you say it's the  
25 California-compliant version?

1 A. Yes, I am.

2 Q. To your knowledge, is this handgun model, the Smith &  
3 Wesson M&P 9 Shield, popular outside of California?

4 A. The noncompliant ones are.

5 Q. Is this one that has the chamber load indicator and  
6 magazine disconnect mechanism popular outside of California, to  
7 your knowledge?

8 A. No. This particular one with the tactile loaded chamber  
9 indicator in the magazine M&P is not popular outside of  
10 California.

11 MR. BRADY: Okay. I would like to enter this as  
12 Exhibit 6, please.

13 MR. DALE: Five.

14 MR. BRADY: Five. I'm sorry. Exhibit 5.

15 THE COURT: Any objection?

16 MR. SAROSY: No objection, Your Honor.

17 THE COURT: Exhibit 5 will be received into evidence.

18 (Exhibit 5 was received into evidence.)

19 BY MR. BRADY:

20 Q. Mr. Fatohi, you mentioned a different version of this  
21 pistol, of the pistol we just looked at, the M&P Shield.

22 Is this, on your screen, the model that you were referring  
23 to?

24 A. Yes. That looks to be the latest M&P Shield that is  
25 available across the nation.

1 Q. And it's called the M2.0. So it's the updated version of  
2 the M&P Shield?

3 A. Yes.

4 Q. And, to your knowledge, is this firearm model popular  
5 outside of California?

6 A. Yes, it is.

7 MR. BRADY: I'd like to enter this as Exhibit 6,  
8 please.

9 THE COURT: Any objection?

10 MR. SAROSY: No objection, Your Honor.

11 THE COURT: Exhibit 6 will be received into evidence.  
12 (Exhibit 6 was received into evidence.)

13 BY MR. BRADY:

14 Q. Mr. Fatohi, are you aware of any commercial manufacturer  
15 currently producing a handgun with microstamping technology?

16 A. No, I am not.

17 Q. Are you familiar with a manufacturer that has ever  
18 commercially produced a handgun with microstamping technology?

19 A. No, I am not.

20 Q. Do you have any figures on how many handguns are sold  
21 nationwide on an annual basis?

22 A. Yes. Actually, if we look to the ATF AFMER, which is the  
23 production report --

24 Q. I'm sorry. Mr. Fatohi, could you slow down and repeat  
25 that. I didn't hear. Did you say the ATF?

1 A. Sorry. I'm sorry about that. The ATF AFMER, which is the  
2 Firearms Manufacturing Export Report produced by the ATF on all  
3 domestic firearm production. And if we looked at that -- I  
4 believe the latest is the 2020 version. They are always a  
5 couple of years behind. And the last time I recall looking at  
6 that executive summary, there were somewhere around five and a  
7 half million pistols produced in 2020.

8 Q. And -- correct me if I'm wrong -- it's been your testimony  
9 that the majority of those are not on California's roster?

10 A. That's correct.

11 Q. In your work at NSSF, have you learned about the size of  
12 the California firearms marketplace?

13 A. So NSSF has never done any targeted firearm market size  
14 studies of California. But I'm in charge of updating our  
15 annual economic impact report, which is a national report  
16 broken out by state on the economic impact of the firearm and  
17 ammunition industry. And in that report, California is always  
18 a top performer in the summarized metrics.

19 There it is right there.

20 Q. Is this the report that you were just referring to --

21 A. Yes.

22 Q. -- on your screen?

23 I would like to enter this as Exhibit 7, please.

24 THE COURT: Any objection?

25 MR. SAROSY: Objection. Hearsay. Lacks foundation.

1 I don't know where this is from, Your Honor.

2 BY MR. BRADY:

3 Q. Mr. Fatohi --

4 Sorry about that.

5 THE COURT: Do you want to lay the foundation and why  
6 it's not hearsay.

7 BY MR. BRADY:

8 Q. Mr. Fatohi, you work for NSSF; correct?

9 A. That's correct.

10 Q. And NSSF has produced this report that we're looking at  
11 here?

12 A. So this report, the data that is made from it and included  
13 in it is generated from economic data provide by global  
14 economics. And that data is then brought to us, and we make  
15 the cosmetic changes to the report, change some of the text in  
16 the report, do some of the background math, and then produce  
17 the finalized version of the report.

18 Q. So a third party is conducting the research and generating  
19 the content and providing it to you all, and you are packaging  
20 it -- NSSF is packaging it in a report?

21 A. That is exactly right.

22 MR. BRADY: I renew my submission of this report.

23 THE COURT: I will allow it, because it sounds to me  
24 like it's a summary chart of statistics and information  
25 provided by the government, a public record. But if there are

1 any advocacy or arguments or statements made that are  
2 argumentative or hearsay, defense can point that out. But with  
3 that understanding, I'll receive it into evidence.

4 MR. BRADY: Thank you, Your Honor.

5 (Exhibit 7 was received into evidence.)

6 BY MR. BRADY:

7 Q. So, Mr. Fatohi, on page 5 of this report, it has tables  
8 talking about the economic output, and it breaks down -- it  
9 ranks -- why don't you explain page 5, because I think you  
10 were --

11 A. No problem. Happy to. So our top ten page -- as you guys  
12 can you see here -- we take our metrics that are supplied by  
13 that third party, and we rank, based on performance, our  
14 various metrics. And particularly in California, to get back  
15 to the original question of the market size for California,  
16 conclusions can be drawn from the size of it based on its  
17 performance on this top ten page. Not only is California the  
18 number one federal excise tax but also number two in both jobs  
19 and economic output for industry activity.

20 Q. And are we seeing that by looking at the table and seeing  
21 California is listed as number two on economic output, total  
22 dollars?

23 A. Uh-huh.

24 Q. And jobs, California is listed as two. And that is how  
25 you are coming to that conclusion?



1 A. Yes.

2 Q. The third table, the excise tax, can you briefly explain  
3 it to us. California is number one; is that correct?

4 A. That is correct.

5 Q. Can you explain what the excise tax means?

6 A. Sorry. Yes. So excise tax is paid on the wholesale value  
7 of firearms -- I'm sorry. Not firearms. But ammunition, long  
8 guns, and handguns.

9 Q. So this is a tax that manufacturers of firearm-related  
10 products and ammunition-related products pay to the government  
11 based on what they produce?

12 A. Yes. When manufacturing firearms for long guns, handguns,  
13 or ammunition, there is a requirement to pay a federal excise  
14 tax on those products for the wholesale value.

15 Q. And California is number one in paying that tax?

16 A. That's correct. Out of all 50 states.

17 Q. So is it fair to say, based on this, that California is a  
18 fairly large firearm marketplace?

19 A. It is a huge marketplace.

20 MR. BRADY: Thank you, Mr. Fatohi. That's all I  
21 have.

22 CROSS-EXAMINATION

23 BY MR. SAROSY:

24 Q. Mr. Fatohi, can you hear me?

25 A. Yes, I can.

1 Q. All right. Sorry. I didn't want to give you seasickness  
2 when I moved to the podium.

3 My name is Charlie Sarosy. I'm a Deputy Attorney General  
4 representing the defendant in this case.

5 You were just talking about -- I think it was Exhibit 6  
6 and the charts of the federal excise taxes.

7 A. Uh-huh.

8 Q. California has the largest population of those states  
9 listed; correct?

10 A. I am not exactly sure. It might be. I know it's one of  
11 the top ones.

12 Q. Are you aware of California's current population?

13 A. Not off the top of my head, sir, no.

14 Q. Do you know offhand that California has one of the largest  
15 populations among the 50 states --

16 A. Yes.

17 Q. -- in the United States?

18 A. It is certainly one of the largest populations, but I  
19 could not put a number to it right now.

20 Q. I think at the beginning of your testimony, you mentioned  
21 handgun roster stats from fourth quarter 2020; correct?

22 A. Yes, correct.

23 Q. So that's over two years ago; correct?

24 A. Yes.

25 Q. And --

1 A. Those are the fact sheets -- sorry, go ahead. All the  
2 fact sheets and all the metrics included in them every year,  
3 but sometimes we just don't have the time and bandwidth.

4 Q. Understood. Thank you.

5 Have you been to the Bureau of Firearms' website before?

6 A. The ATF website?

7 Q. No. The California Bureau of Firearms' website?

8 A. Oh, yes, I have.

9 Q. And have you been to the part of the website where it has  
10 searchable boxes for the handgun roster?

11 A. Yes.

12 Q. And I know there is a difference between similars and, I  
13 guess, tested handguns. But on the searchable boxes, you can  
14 look to see if a handgun is on the roster; correct?

15 A. Uh-huh.

16 Q. Is that a "Yes"?

17 A. Yes. Sorry, sorry, yes.

18 Q. Thank you. And I know you were talking about chamber load  
19 indicators not being popular in the firearms industry, but  
20 chamber load indicators are something that are feasible;  
21 correct?

22 A. I would say they could be feasible.

23 Q. Well, there are handguns that are sold in California, that  
24 are on the roster that have chamber load indicators; correct?

25 A. Yes, there are.

1 Q. So that would mean they are feasible; correct?

2 A. To --

3 Q. It's feasible for a manufacturer to manufacture a firearm  
4 with a chamber load indicator?

5 A. Yes.

6 Q. And there are handguns on the roster with a magazine  
7 disconnect; correct?

8 A. I believe there are some.

9 Q. And there are four manufacturers, I believe, that  
10 manufacture firearms with chamber load indicators and magazine  
11 disconnects; correct?

12 A. I am not sure on the specific number of four, but I know  
13 there are some.

14 Q. Which ones do you know?

15 A. Smith & Wesson, especially the one that -- the model that  
16 we just talked about, the Shield. And I believe Ruger also  
17 produces one.

18 Q. I'm sorry. What was the second one you said other than  
19 the Smith & Wesson?

20 A. Ruger. Sturm, Ruger.

21 Q. Ruger. Okay. And does it sound right that Kahr or Kahr  
22 Arms -- K-a-h-r -- it's probably Kahr, probably not Care  
23 Arms -- manufactures a firearm with a chamber load indicator  
24 and magazine disconnect that is on the roster?

25 A. I am not positive on that.

1 Q. Are you aware of a handgun manufactured by Sig Sauer that  
2 manufactures handguns with the chamber load indicator, magazine  
3 disconnect?

4 A. No, I am not.

5 Q. And what about FMK Firearms?

6 A. I am not.

7 Q. And are you aware that, as of July 1, 2022, microstamping  
8 is required in only one internal part of the semi-automatic  
9 pistol to comply with the Unsafe Handgun Act?

10 A. Yeah. I believe Gavin Newsom signed that September 2020.

11 Q. And it is currently in effect; correct?

12 A. Yes. One instance of microstamping on a handgun.

13 Q. And you said that you prepare fact sheets for each state  
14 in your role as a research manager; correct?

15 A. No, I do not. I prepare fact sheets on topics for the  
16 industry.

17 Q. Understood. I'm sorry.

18 A. Not each state.

19 Q. Sure. And are you aware that the National Shooting Sports  
20 Foundation previously sued the State of California regarding  
21 the microstamping requirement?

22 A. I'm aware.

23 Q. And you're aware that that case made it to the California  
24 Supreme Court; correct?

25 A. Yes, I am.

1 Q. And are you aware that NSSF filed a brief along with the  
2 Sporting Arms and Ammunition Manufacturers' Institute in that  
3 case before the California Supreme Court?

4 A. I am aware that that one was filed, but I am not aware of  
5 the details.

6 Q. So you, yourself, have not reviewed the brief?

7 A. I could not speak to it in detail right now.

8 Q. Are you aware that, in that brief NSSF and the Sporting  
9 Arms and Ammunition Manufacturers' Institute conceded that  
10 microstamping was feasible for the firing pin of a  
11 semi-automatic pistol?

12 A. I am not.

13 MR. BRADY: Objection. Misstates -- lacks  
14 foundation.

15 THE COURT: Overruled.

16 MR. BRADY: What was the question?

17 MR. SAROSY: Your Honor, I have --

18 THE COURT: He said he's not aware of it.

19 MR. SAROSY: Your Honor, I have a copy of those  
20 briefs for the Court and Plaintiffs' Counsel, and I can show  
21 the witness to point him to those statements, if that would be  
22 helpful to the Court.

23 THE COURT: Well, it's your choice. I assume you're  
24 going to be submitting into evidence those briefs. They  
25 were --

1 MR. SAROSY: I can.

2 THE COURT: -- a matter of public record.

3 I can receive them into evidence. If you want to ask him  
4 about it, please feel free to do, but I think your point is  
5 this is what they've said.

6 MR. SAROSY: I will at least show the witness the  
7 brief.

8 THE COURT: All right.

9 BY MR. SAROSY:

10 Q. All right. Mr. Fatohi, if you will give me one moment.

11 Mr. Paschal, I think you have to add Mr. Woods as a host  
12 as well, or co-host.

13 THE COURTROOM DEPUTY: Try it now.

14 BY MR. SAROSY:

15 Q. All right. Mr. Fatohi, can you see this, copy of this  
16 brief?

17 A. Yes.

18 Q. And do you see the date on there as August 21, 2017?

19 A. Yes, I do.

20 Q. And do you see the National Shooting Sports Foundation as  
21 the party?

22 A. Yes.

23 Q. And do you see that this brief was filed by the NSSF?

24 A. Yes.

25 Q. And I'm going to go to page 4, and I'm going to highlight

1 the sentence for you.

2 Do you see the sentence -- I will read it.

3 A. Uh-huh. Okay.

4 Q. It says, "Specifically, while appellants acknowledge" --  
5 and appellants here are NSSF, and I think SAAMI is the  
6 acronym -- "acknowledge that a microstamp imprinted on a firing  
7 pin of a semi-automatic pistol will occasionally transfer to  
8 the primer located at the rear of a cartridge case upon firing,  
9 the record contains uncontroverted expert testimony that it is  
10 impossible to imprint a microstamp on any other surface or part  
11 of a semi-automatic pistol that will transfer to the cartridge  
12 case when the pistol is fired."

13 Do you see that sentence?

14 A. I do see the sentence.

15 Q. And that case occurred when microstamps were required on  
16 two places within a semi-automatic pistol; is that correct?

17 A. I believe so.

18 Q. So is it correct that NSSF admitted in the sentence that  
19 microstamping on one place is possible?

20 A. You know, I believe the sentence says that it's  
21 occasional.

22 Q. Well, occasional is possible; correct?

23 A. I believe so.

24 Q. I'm going to go to page 7. I'm going to highlight the  
25 sentence again for you. And it says, "Microstamped characters



1 that identify the make, model, and serial number of a  
2 semi-automatic pistol (a "microstamped alphanumeric code") can  
3 be etched or imprinted on the tip of the pistol's firing pin,  
4 and such a microstamped alphanumeric code will sometimes  
5 transfer onto the primer contained within the cartridge case,  
6 which the firing pin strikes during the pistol's firing  
7 process."

8 Do you see that sentence?

9 A. Yes, I do.

10 Q. And that is, again, NSSF admitting that microstamping on a  
11 firing pin is possible. Regardless of occasional or not, it is  
12 possible; correct?

13 A. I do believe that statement makes it so that the -- what  
14 you are saying is, yes, it's possible.

15 Q. And that brief was filed in August 2017, so five and a  
16 half years ago, about?

17 A. Uh-huh.

18 Q. Sorry. I need a "Yes" or a "No," unfortunately.

19 A. Sorry. Correct, yes. Sorry about that.

20 Q. No problem. It's an awkward interaction to testify, so I  
21 get it.

22 All right. Your Honor, I would like to move into evidence  
23 for Defendant's Exhibit 25.

24 THE COURT: Is that the brief?

25 MR. SAROSY: Yes, that's the brief.

1 THE COURT: Any objection?

2 MR. DALE: No objection.

3 THE COURT: That exhibit will be received into  
4 evidence.

5 (Exhibit 25 was received into evidence.)

6 MR. SAROSY: Thank you, Mr. Fatohi. That's all I  
7 have.

8 THE COURT: Mr. Fatohi, just a couple questions for  
9 you.

10 In your opinion, based on your experience, why is  
11 microstamping not popular, since you believe it could be done?

12 THE WITNESS: So while I do think that it could  
13 occasionally happen to where microstamping technology works for  
14 a one-off instance of supplying a gear code and that then makes  
15 a it a possible technology, it is not really a feasible  
16 technology based on the studies and also the patent within  
17 itself stating, in technical data and studies, that it's not a  
18 feasible technology. The sample size is far too large in a  
19 laboratory study for the technology to be reliable; therefore,  
20 it is not really a usable crime-solving tool, as it is  
21 marketed.

22 THE COURT: Okay. Anymore questions?

23 MR. BRADY: No further questions, Your Honor.

24 THE COURT: All right. Okay. Thank you, sir.

25 THE WITNESS: Thank you very much.

1 MR. BRADY: Your Honor, plaintiffs' next witness will  
2 be Michael Beddow, and I believe he's awaiting us in the --

3 THE COURT: Okay.

4 (A discussion was held off the record between Counsel.)

5 THE COURT: Hello, sir.

6 THE WITNESS: Hello.

7 THE COURT: Could you please come forward. I'm going  
8 to have you stand right by our court reporter for a moment.  
9 We'll administer an oath to you, and then have you take the  
10 witness stand.

11 THE WITNESS: All the way over?

12 THE COURTROOM DEPUTY: Sorry.

13 (A discussion was held off the record between Counsel.)

14 THE COURTROOM DEPUTY: Please raise your right hand.  
15 Do you solemnly swear that the testimony you shall give in the  
16 cause now before this Court shall be the truth, the whole  
17 truth, and nothing but the truth, so you help you God?

18 THE WITNESS: Yes, I do.

19 THE COURTROOM DEPUTY: Please be seated.

20 Please state your name and spell your last name for the  
21 record.

22 THE WITNESS: My name is Michael Beddow. Last name  
23 is spelled B-e-d-d-o-w.

24 THE COURT: Please proceed.

25 MICHAEL BEDDOW,

1     called by and on behalf of Plaintiffs, testified as follows:

2 | DIRECT EXAMINATION

3 BY MR. BRADY:

4 Q. Thank you, Mr. Beddow. Can you explain to us your  
5 background?

6 A. Absolutely. I have a bachelor's degree in chemistry from  
7 Northern Arizona University. I have a master's degree in  
8 forensic science from the University of California at Davis.  
9 Post graduation, I worked as a laboratory technician for the  
10 Sacramento County District Attorney's Crime Lab in Sacramento,  
11 California for a short stint, prior to being hired on as a  
12 forensic scientist with the City of Phoenix Police Department  
13 Crime Laboratory. I've been there for approximately 15 years.  
14 Also, beginning in 2015, my wife and I started a private  
15 forensic consulting firm known as Forensic Review and  
16 Consulting.

17 Q. And that last bit, that is the capacity in which you are  
18 here testifying today? Your company?

19 | A. That is correct.

20 Q. But you are a forensic scientist for the Phoenix Police  
21 Department, currently?

22 | A. That is correct.

23 Q. Does your forensic work ever involve firearms?

24 | A. Yes, it does.

25 | Q. often?

1 A. All of it. My title is a forensic firearms examiner.

2 Q. Okay. To be a forensic firearms examiner, did you receive  
3 any training?

4 A. Absolutely. That training involved not only having a  
5 degree in a physical science but also extensive on-the-job  
6 training by senior members within the forensic community as  
7 well as training from firearms manufacturers and other  
8 individuals to include academia associated with forensic  
9 science.

10 Q. Did you receive any certifications or anything of that  
11 nature, credentials to be a forensic firearms --

12 A. No. Only successful completion of the training program  
13 within the agencies that I worked for.

14 Q. Okay. Outside of the agencies, are you a member of any  
15 groups that do firearm examining?

16 A. Yes. I'm a member of the Association of Firearm and  
17 Toolmark Examiners. It is a worldwide organization specific to  
18 studying firearms and toolmark examination and the science  
19 behind it. And I also am a member of the FBI's technical  
20 working group on the application of 3D topographical systems  
21 into the firearms community.

22 Q. Going back to the first one you mentioned, what was it?

23 A. The Association of Firearm and Toolmark Examiners.

24 Q. Can you --

25 A. Also known as AFTE.

1 Q. AFTE. I'll do that. Thank you. A-F-T-E?

2 A. Yes, sir.

3 Q. Can you, just briefly, surmise what it is that AFTE does?

4 A. AFTE is an organization of not only firearms examiners  
5 from around the world but also technical advisors from  
6 academia, firearms manufacturers, and other disciplines  
7 interested in studying and promoting the field of firearm and  
8 toolmark examination.

9 Q. And do they produce any materials?

10 A. Yes. We have a scientific journal that is published  
11 quarterly as well as we host an annual training conference,  
12 that moves around the United States annually, to provide  
13 up-to-date training on new ideas and research within our  
14 discipline.

15 Q. Have you ever been published in an AFTE Journal?

16 A. Yes, I have.

17 Q. How many times?

18 A. Twice.

19 Q. And then you said a second one after AFTE. Was it FBI?

20 A. I'm a member of a technical working group that is hosted  
21 by the FBI on the application of 3D topographical technologies  
22 to firearms and toolmark analysis.

23 Q. Can you briefly -- most of us probably won't be smart  
24 enough to follow you. I know at least I won't be. So can you  
25 just briefly, 30,000-foot level, explain what that is?

1 A. Yes.

2 Q. What you all do?

3 A. One of the new technologies being deployed within the  
4 firearm and toolmark industry on the forensic side is the use  
5 of specialized 3D surface scanning instruments. So these  
6 instruments scan the surface and render a three-dimensional  
7 image of that surface for us to perform our comparisons in a  
8 virtual capacity, so on a computer screen, as opposed to  
9 looking at them through a conventional microscope.

10 Q. Thank you. Are you familiar with the term  
11 "microstamping"?

12 A. Yes, I am.

13 Q. And can you explain what your understanding of  
14 microstamping is?

15 A. Microstamping is the application of microscopic  
16 characters, typically, laser-engraved or etched onto working  
17 surfaces in a firearm for their potential subsequent transfer  
18 onto the fire casings.

19 Q. And how did you learn about microstamping?

20 A. I learned about microstamping during my tenure as a  
21 graduate student at the University of California at Davis. I  
22 was approached by the director of our graduate program to  
23 participate in the research project studying microstamping  
24 technology.

25 Q. And when was that?

1 A. That would have been in 2005.

2 Q. Okay. 2005. And what did that study entail, basically?

3 A. The study -- so the original proposal was written up by  
4 one of our -- one of the engineering professors associated with  
5 the program as well as the program director. And funding was  
6 received through the California Policy Research Center, which  
7 is a division of the University of California. That funding,  
8 and original proposal was to study the concept of microstamping  
9 as well as longevity of the characters and their ability to  
10 transfer to fired cartridge casings.

11 Q. And did you conduct a study to determine those questions  
12 that were raised?

13 A. Yes, I did.

14 Q. Okay. And it was a written study?

15 A. Yes.

16 Q. Was it published?

17 A. Yes, it was.

18 Q. By whom?

19 A. It was published as my thesis, through my master's thesis,  
20 through the University of California. It was also published as  
21 a paper written to the California Policy Research Center. And  
22 then, subsequently, I published a version of that in the AFTE  
23 Journal.

24 Q. Was your study ever peer reviewed?

25 A. Yes, it was.



1 Q. By whom?

2 A. At all three levels, it was, indeed, peer reviewed. My  
3 thesis was reviewed by my thesis chair, which would have been  
4 the program director, a mechanical engineer with UC Davis, and  
5 a criminal justice professor through UC Davis.

6 The paper written for the California Policy Research  
7 Center was reviewed by an external private forensic firearms  
8 examiner as well as two criminal justice professors from UC  
9 Irvine.

10 And then my paper published in the AFTE Journal was peer  
11 reviewed by members of the AFTE Editorial Committee -- or AFTE  
12 Journal Editorial Committee.

13 Q. In conducting your study, did you form any opinion on  
14 whether the microstamping technology that you evaluated in that  
15 study could be successfully implemented to or by -- sorry -- by  
16 the commercial handgun industry?

17 A. Yes, I did.

18 Q. And what was your opinion?

19 A. My opinion was the technology, as I evaluated it for this  
20 research, was not suitable for mass implementation at that  
21 time.

22 Q. Was not suitable for mass implementation.

23 In other words -- can you explain what you mean "by not  
24 suitable for mass implementation"?

25 A. What I mean by that is that the technology, as I evaluated

1 it, could not be directly implemented into every make and model  
2 of new firearms or semi-automatic handguns without additional  
3 research to determine if it would work in those firearms.

4 Q. Okay. So in other words, is it your testimony that, after  
5 your study, it's your opinion that the microstamping technology  
6 that you studied is not universally implementable to  
7 semi-automatic handguns that are being -- in other words, a  
8 manufacturer can't just take the technology as it currently  
9 exists and plug it into their firearms? Is that your position?

10 A. That is correct.

11 Q. To your knowledge, is there any other microstamping  
12 technology that purports to be viable beyond the one that you  
13 evaluated in your study?

14 A. Not that I'm aware of, no.

15 Q. Do you have a reason to believe that the microstamping  
16 technology that you evaluated in your study has progressed and  
17 been made better to address any issues than from when the time  
18 you evaluated it in 2005?

19 A. I have not seen any publications to support that, no.

20 Q. Based on your conducting the study and seeing the issues  
21 that you found with microstamping, whatever they are, as to why  
22 it's not implementable universally, do you think it's possible  
23 to develop a microstamping technology that can be universally  
24 implementable for all handguns?

25 A. I think it would be very difficult to develop a

1 one-stop-shop technology, if you will, because of the vast  
2 differences that exist between the mechanical design of the  
3 firearms and the differences in metallurgy of the different  
4 brands of ammunition to include finishing processes such as  
5 primer, lacquer, things of that nature in combination together.

6 Q. Can you explain that a little bit. I'm sorry. So you are  
7 saying that the technology depends on or can be altered by  
8 certain factors such as metallurgy? Is that what I heard you  
9 say?

10 A. Yes.

11 Q. Can you explain that? I'm sorry.

12 A. So a firearm is a mechanical component. So just like any  
13 other mechanical component, there is tolerances within -- or  
14 between the inner workings of each of the pieces of that  
15 mechanism. And every firearm has its own mechanical design and  
16 tolerances from each manufacturer. As well as there's  
17 variances within the metallurgy that makes the primers, so the  
18 type of metal, the hardness of the metal, as well as variations  
19 in the metallurgy of the ammunition. Also, there are  
20 variations within the pressures produced by different  
21 cartridges of different calibers. And all of these things can  
22 have an effect on how the characters have the ability to  
23 transfer.

24 Q. Did I hear you say that the type of ammunition that is  
25 receiving the mark can play a role in whether or how well the

1 mark transfers?

2 A. That is correct.

3 Q. Would there be any way in your -- to your knowledge, to  
4 account for that variable of ammunition on the firearms side of  
5 things -- firearms side of things? In other words, could there  
6 be technology made on the firearms side to address -- to  
7 account for the variable of the ammunition?

8 A. I do not believe so.

9 Q. In conducting your study, did you form any opinion on  
10 whether microstamping technology -- the microstamping  
11 technology that you evaluated could be overcome, like, defeated  
12 by a person who has that -- possesses the firearm?

13 A. Yes.

14 Q. And what was your opinion?

15 A. As part of my research, I chose two of my firing pins to  
16 intentionally deface or attempt to deface those characters that  
17 were laser-etched onto the firing pins. One of the firing  
18 pins, I rubbed across the surface of a household sharpening  
19 stone for a short period of time. It was, like, 15 to 30  
20 seconds. I would have to go back and look at the study for the  
21 time. That successfully removed sufficient material off the  
22 tip of the firing pin for the alphanumeric code that was on the  
23 face to be completely removed. And then reinstalled that in  
24 the firearm. And I successfully discharged the firearm, so I  
25 did not remove enough material to render the firearm

1 inoperable.

2       The second method as opposed -- that I wanted to test, as  
3 opposed to physical removal of material, was to damage,  
4 physically damage, the characters. So I took the firing pin  
5 and a hammer and went onto the anvil side, or the flat side of  
6 a bench vise, and lightly tapped the characters for  
7 approximately 15 seconds per set of characters, so the ones  
8 that were on the side, known as the radial bar code, and then  
9 the one's on the tip, which were the alphanumeric. And this  
10 sufficiently deformed the characters to the point that they  
11 were no longer legible.

12 Q.   So you said -- correct me if I'm wrong, you said you  
13 removed the firing pins from the handguns?

14 A.   That is correct.

15 Q.   So could you replace -- how difficult was it to remove the  
16 firing pin from the handgun?

17 A.   The majority of semi-automatic handguns' firing pins are  
18 not extremely difficult, to include some that are very easy, to  
19 remove/replace. There are some that are more difficult than  
20 others. Once again, going back to that design; however, there  
21 is sufficient information for most all firearms to figure out  
22 how to replace it, as it is a component that can indeed break  
23 and need replacing.

24 Q.   So an end-user, the owner of a handgun could, at least in  
25 some instances, easily replace a firing pin that does not have

1 microstamping technology on it?

2 A. That is correct.

3 Q. Do you have any reason to believe, as you sit here today,  
4 that the technology that you evaluated has become more  
5 difficult to defeat or overcome since the time you evaluated  
6 it?

7 A. No.

8 Q. Have you ever seen a firearm with microstamping outside of  
9 the study you conducted?

10 A. No, I have not.

11 Q. Never in your work as a forensic firearms examiner?

12 A. No, sir.

13 Q. How many firearms do you examine on a given week?

14 A. It really depends on the type of case that I've been  
15 assigned. Typically, most cases only have one to, maybe, five  
16 guns associated with them. So any given week would be a  
17 handful.

18 Q. How many firearms have you examined over the course of  
19 your career, if you could probably say a ballpark?

20 A. Ballpark would be thousands.

21 Q. And you've never seen any of them with microstamping?

22 A. That is correct.

23 Q. Have you ever heard of a firearm with microstamping being  
24 used as evidence in a case?

25 A. No.

1 Q. In a criminal case? No.

2 Are forensic professionals like yourself trained on  
3 identifying microstamping?

4 A. No, we are not.

5 Q. So I assume, then, they're not trained to decipher it  
6 either?

7 A. That is correct.

8 Q. Does somebody need to be trained to decipher microstamping  
9 technology, the one that you evaluated?

10 A. The firing pins that I evaluated possessed three different  
11 types of encoding. One was an alphanumeric code, which was  
12 written on the very tip of the firing pin, the second was  
13 referred to as a gear code, which was a circular gear-shaped  
14 structure that went around those alphanumeric characters, and  
15 then a radial barcode which was a series of lines in a barcode  
16 format that went around the circumference of the firing pin.

17 As far as alphanumeric, that was fairly straightforward.  
18 They're just alphanumeric characters. But I was not provided  
19 by the manufacturer any method or fashion in which to decode  
20 the gear code and radial barcode.

21 Q. So for that version of the microstamping, you were unable  
22 to determine whether the microstamping imprint successfully  
23 transferred?

24 A. I could determine whether it -- the features themselves  
25 visually transferred, but I could not decipher what the

1 characters meant or if any spatial arrangements in that  
2 transfer affected their interpretation.

3 Q. And is it your understanding that the purpose, the  
4 theoretical purpose, of microstamping is to leave an imprint on  
5 the casing that can be read to connect it to a specific  
6 firearm?

7 A. That is correct.

8 Q. And so if you were unable to read or decipher that code,  
9 that would defeat the purpose of the microstamp?

10 A. Yes.

11 Q. Is microstamping considered an actual tool by professional  
12 forensic examiners like yourself?

13 A. No.

14 Q. Outside of studies like the one you conducted, have you  
15 ever heard of a firearm having microstamp technology?

16 A. Outside of other research, no.

17 MR. BRADY: Thank you, Mr. Beddow.

18 THE COURT: I just have one question. I know it's  
19 going to be repetitive of your answer.

20 But in your original study, you indicated it wasn't  
21 feasible or possible to implement the microstamping in the  
22 industry. why?

23 THE WITNESS: At that time, per communication with  
24 the inventor/manufacturer, a process that was referred to me  
25 known as "optimization" of those firing pins needed to be



1 completed for every make and model of firearm and design a  
2 firing pin. So basically, some level of research and  
3 development had to be conducted for every different shape of  
4 firing pin in conjunction with that particular make and model's  
5 firing mechanism.

6 THE COURT: So it couldn't be uniform?

7 THE WITNESS: So it wasn't a universal application.  
8 And that was in my recommendation to the paper I wrote back to  
9 the California Policy Research Center, was an additional, a  
10 larger scale study needed to be done to determine if such mass  
11 implementation could be done or if it was truly still going to  
12 be on a make-and-model dependent and with that applied R&D  
13 necessary.

14 THE COURT: And I take it from your testimony, even  
15 if you identified one model that you could microstamp, a person  
16 could easily obliterate or modify?

17 THE WITNESS: Knowing the location, yes.

18 THE COURT: Thank you.

19 MR. BRADY: Thank you, Mr. Beddow.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. SAROSY:

23 Q. Good morning. I think it's still morning. Is it Beddow?

24 A. Beddow.

25 Q. Beddow. I'm sorry. Beddow.

1 My name is Charlie Sarosy. I'm a Deputy Attorney General.  
2 I'm representing the defendant in this case. Thank you for  
3 being here. I have a few questions for you.

4 So microstamping is not required for rifles or shotguns  
5 sold in California; correct?

6 A. To my understanding, correct.

7 Q. And it is only required -- it's not required for  
8 revolvers; correct?

9 A. To my understanding, yes.

10 Q. It's required only for semi-automatic pistols?

11 A. Yes.

12 Q. And your study was, I think you said, published in 2008;  
13 correct?

14 A. The final publication was 2008, that is correct.

15 Q. And microstamping was required for handguns to be added to  
16 the roster not until 2013; correct?

17 A. Those dates, I was unaware of.

18 Q. At the time of your study, microstamping was not a  
19 requirement for handguns to be added to the roster; correct?

20 A. Correct.

21 Q. Okay. And are you aware that, as of -- and I understand  
22 you're from Phoenix -- or you currently reside in Phoenix. But  
23 are you aware that, as of July 1, 2022, microstamping for  
24 handguns out of the roster is required in only one internal  
25 mechanism within a semi-automatic pistol?

1 A. I have been made aware of that, correct.

2 Q. Okay. And are you aware that, under California law, the  
3 type of microstamp required uses alpha and/or numeric  
4 characters?

5 A. Yes.

6 Q. And are you aware that is called a Firearm Identification  
7 Number, or a FIN?

8 A. I was unaware of the term that's been given to it.

9 Q. And are you aware that the FIN is something that would  
10 consist of at least eight, but no more than 12, unique alpha  
11 and/or numeric characters?

12 A. I did not know the requirements regarding the number of  
13 characters.

14 Q. Are you aware, based on current California regulations,  
15 that the manufacturers -- the intent for microstamping is that  
16 manufacturers would report to that Firearm Identification  
17 Number, or FIN, to the Department of Justice so that there can  
18 be a matching between the FIN and the serial number of the  
19 firearm?

20 A. That was my understanding for the purpose of the  
21 microstamping, yes.

22 Q. Right. And, obviously, in your study, you said you did  
23 not do that. If you look at an alphanumeric code, you couldn't  
24 match what firearm it was; correct? Because it's not like you  
25 had a database of --

1 A. That is correct. The firearms that were selected for my  
2 research were chosen in conjunction with my thesis advisers and  
3 individuals from the California Criminalistics Institute, who  
4 were assisting me, as well as providing me access to their  
5 firearms library. That is where the firearms came from.

6 And then firing pins for those firearms were purchased  
7 through a secondary vendor. Those firing pins were shipped to  
8 the manufacturer of the microstamping, and it subsequently  
9 laser-engraved for my process.

10 Q. So the study that you did on microstamping was not a  
11 full-scale recreation of how microstamping was intended to work  
12 in the State of California, meaning there is not -- you didn't  
13 have a database of matching pins with serial numbers; correct?

14 A. That is correct. It was a very limited scale.

15 Q. And your name was on the study that you mentioned, in  
16 2008; correct?

17 A. That is correct.

18 Q. And I believe you said that alphanumeric code was the  
19 easiest to read of the three microstamping types you said. You  
20 said alphanumeric, gear, and radial. The alphanumeric was the  
21 easiest; correct?

22 A. It is the only one, because of it being alphanumeric, that  
23 I could decipher. The others, I had no method in which to  
24 determine what those features could be interpreted to mean, so  
25 I wasn't provided with any method to decipher.

1 Q. Right. So for an alphanumeric code, you don't need a  
2 secret -- a decipher or some kind of secret device to  
3 understand what the letters and numbers mean; correct?

4 A. That is correct.

5 Q. Okay. And do you recall interviewing with journalists  
6 about your microstamping study?

7 A. To my recollection, during my research and while I was in  
8 Davis, I had only met with one journalist through a paper from  
9 UC Davis.

10 Q. Was that newspaper called *The Aggie*?

11 A. I believe so, yes.

12 Q. And was that journalist -- do you remember her name? --  
13 Wendy Wang?

14 A. I don't recall the name.

15 Q. Totally fair.

16 Do you recall saying in that interview that microstamping  
17 is feasible?

18 A. Yes.

19 Q. Do you recall saying that -- and I can provide you a copy  
20 of the article.

21 If that is okay, Your Honor?

22 THE COURT: Sure.

23 BY MR. SAROSY:

24 Q. Sorry. It's double-sided.

25 A. Thank you. That's quite all right.

1 Q. And I'm going to point you to -- admittedly, this is my  
2 first time using this, but --

3 Mr. Paschal, how do I adjust the Zoom?

4 THE COURTROOM DEPUTY: It's right there, plus/minus.

5 MR. SAROSY: Oh, I see. Thank you.

6 THE COURTROOM DEPUTY: You're welcome.

7 BY MR. SAROSY.

8 Q. Okay. I assume you can hear me, Mr. Beddow?

9 A. Yes, sir.

10 Q. I am looking at this paragraph that starts with "The  
11 alphanumeric code," "alphanumerical code." It's near the  
12 bottom of the page.

13 A. Yes.

14 Q. Can you read that paragraph for me?

15 A. "'The alphanumerical code provided the best quality of the  
16 numerical codes. The quality of forgeability of the  
17 impressions ranged from firearm to firearm. Every gun shoots  
18 differently and functions different, so the legibility was  
19 different,' Beddow said. 'Bottom line is, the technology is  
20 feasible; however, it does not function equally.'"

21 Q. Does that sound like an accurate quote?

22 A. Yes.

23 Q. So you don't disagree with that quote; correct?

24 A. No.

25 MR. SAROSY: Your Honor, I would like to move that

1 article into evidence.

2 THE COURT: Any objection?

3 MR. DALE: No objection.

4 THE COURT: The article will be received into  
5 evidence.

6 MR. SAROSY: I will mark that as Defendant's  
7 Exhibit 26.

8 (Exhibit 26 was received into evidence.)

9 MR. SAROSY: Mr. Paschal?

10 THE COURTROOM DEPUTY: Thank you, sir.

11 BY MR. SAROSY:

12 Q. All right. And your study was from 2008; correct?

13 A. The final paper published was in 2008, that is correct.

14 Q. And that is almost 15 years ago; correct?

15 A. That is correct.

16 Q. So almost 15 years ago, you said that microstamping was  
17 feasible; correct?

18 A. That is correct.

19 Q. And if I handed you a copy of your study, I assume you  
20 would recognize it; correct?

21 A. Yes.

22 MR. SAROSY: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. SAROSY:

25 Q. Sorry. This one is also double-sided.

1 I'm just going to ask you a few questions about some of  
2 the findings in your study.

3 A. Absolutely.

4 Q. Does that look like an accurate copy of your study?

5 A. Yes. This is the paper submitted to the California Policy  
6 Research Center.

7 Q. Okay. And was this -- is this the published version?

8 A. This was the one published to the California Policy  
9 Research Center. My thesis, which was just published through  
10 the UC system, is very similar to this, outside of format.

11 Q. So when you say, "Published to the California Policy  
12 Research Center," is that a journal?

13 A. It is a division of the University of California --

14 Q. Okay.

15 A. -- that funds research projects that could potentially be  
16 associated with or affect policy. I don't know very much about  
17 all of their inner workings. I just know that they are  
18 affiliated with the University of California.

19 Q. Okay. And I think you testified something along the lines  
20 of -- but correct me if I'm wrong. But you said microstamping  
21 was not commercially feasible. That was one of the findings of  
22 your study?

23 A. Widespread implementation at a commercial level, I did not  
24 deem to be feasible at that time.

25 Q. Okay. Can you turn to page --



1 I'm sorry, Your Honor. I can provide you a copy right  
2 now, if that would be helpful.

3 THE COURT: Thank you.

4 MR. DALE: Thank you.

5 MR. SAROSY: Sorry. Here is the copy of the article.

6 I am sensitive to the time, Your Honor. So I can keep  
7 going, or I can --

8 THE COURT: How much longer do you anticipate in your  
9 examination?

10 MR. SAROSY: I would say 10 to 15 minutes, perhaps.

11 THE COURT: All right. Why don't we keep going, and  
12 then we'll just break for lunch a little bit later.

13 BY MR. SAROSY:

14 Q. Sure. Can you turn to page 13?

15 A. Yes. One moment, please.

16 Q. And do you see there that it says, under Subsection 4,  
17 Heading 4, "Implementation strategies be developed  
18 collaboratively"?

19 A. Yes, sir.

20 Q. Do you see the first two sentences of that paragraph?

21 A. Yes.

22 Q. Can you read those first two sentences, please?

23 A. "The development of a viable commercial implementation  
24 strategy for the technology is a necessity. This must be  
25 completed in collaboration with officials from the State of

1 California, firearms manufacturers, and ID Dynamics."

2 Q. And you said you are not aware of efforts by firearm  
3 manufacturers to work in collaboration with the California  
4 Department of Justice?

5 A. I have no knowledge of that.

6 Q. Okay. But you are not aware of manufacturers trying to  
7 implement microstamping; correct?

8 A. That is correct.

9 Q. I'm sorry to go backwards, but can you go to page 10? And  
10 I'm looking at the last paragraph, second sentence, that begins  
11 with "At the current time."

12 A. Yes.

13 Q. Can you read that sentence and the following sentence,  
14 please?

15 A. "At the current time, only the alphanumeric and coding  
16 format has the potential to reliably transfer information from  
17 the firing pin to the cartridge case, thereby facilitating the  
18 identification of crime guns outfitted with microstamping  
19 technology. If any numbering system has the future potential  
20 to handle a large database and have some survivability, it is  
21 the alphanumeric system."

22 Q. Going back to what I asked you before, the alphanumeric  
23 system is what is -- at least as far as you know, what is  
24 required -- is the system that would be required in California?

25 A. It is my understanding, yes.

1 Q. So based on this quote, you are saying, 14 years ago, that  
2 the system that California uses for microstamping is the one --  
3 or was the one that has the best chance at being adapted on a  
4 widescale; correct?

5 A. Correct. Of the three different types of encoding  
6 structures that were on the firing pins that I tested.

7 Q. Correct. And the other ones were radial and gear?

8 A. That is correct.

9 Q. And I believe you talked about the firing pin being able  
10 to be defaced; correct?

11 A. That is correct.

12 Q. If you look at a semi-automatic pistol, just from the  
13 outside, would you know that the firing pin has a microstamp?

14 A. Not without magnification.

15 Q. Without firing it or without magnification?

16 A. Even if you fired it, it would still require magnification  
17 to see the potentially transferred characters.

18 Q. So you would really need a microscope or you would need to  
19 know ahead of time that the handgun or the semi-automatic  
20 pistol has microstamping in order to know that you need to  
21 deface it; correct?

22 A. That is correct.

23 Q. And are you aware that defacing a microstamp is a  
24 violation of California law?

25 A. I was not aware of that.

1 Q. Okay. And can serial numbers -- I'm assuming you're aware  
2 of and familiar with serial numbers of firearms; correct?

3 A. That is correct.

4 Q. And can serial numbers also be easily defaced?

5 A. Yes, they can.

6 Q. Can they be defaced in the same manner that you described  
7 the defacement of microstamps?

8 A. Yes.

9 Q. And to do that, to deface a serial number, do you need to  
10 disassemble a firearm before doing so?

11 A. It depends on the location of that serial number, but  
12 typically, no.

13 Q. Because serial numbers are on the external part of the  
14 firearm; correct?

15 A. Yes.

16 Q. Rather than -- the firing pin is an internal part of the  
17 firearm; correct?

18 A. That is correct.

19 Q. I'm going to move you to page 18 and just kind of a higher  
20 level here, to make sure I understand your study correctly,  
21 because I read it and I am not a scientist and I don't have  
22 your background, so I just want to be sure I understand  
23 correctly.

24 I understand that you tested six Smith & Wesson  
25 semi-automatic pistols that were fired by CHP officers, 2,500

1 rounds each; is that correct?

2 A. That is correct.

3 Q. And then you also tested, I believe, five semi-automatic  
4 pistols in addition to those six Smith & Wesson. And the five  
5 were each from a different manufacturer?

6 A. Yes.

7 Q. And one was rimfire, and the other four were centerfire;  
8 is that correct?

9 A. That is correct.

10 Q. And then you also tested a couple of rifles and a shotgun,  
11 I believe; correct?

12 A. Yes.

13 Q. I am not going to talk about the rifles or the shotgun  
14 because that is not relevant here.

15 So The bottom of page 18, I am looking at the very -- the  
16 last paragraph, the last sentence that goes on to the next  
17 page, it starts with, "In this test."

18 Do you see that?

19 A. Yes, sir.

20 Q. Can you read that sentence?

21 A. "In this test, only the alphanumeric encoding performed  
22 well on the new CHP Smith & Wesson pistols. The radial  
23 barcodes and the dot codes being illegible."

24 Q. And, again, California has the alphanumeric coding, is  
25 your understanding?

1 A. Correct. And just for clarification, on these ones, since  
2 they had the different type of encoding listed as dot codes,  
3 these particular pins provided by the manufacturer, he,  
4 apparently, was testing a different coding structure as opposed  
5 to the gear code, which was called a dot code, and it was small  
6 circles placed in varying positions in the clock orientation  
7 from 12:00 to 12:00. But they were extremely small. And so I  
8 am not sure if that had some reason why he went away from that  
9 to the gear code, but those were the only pins that I worked  
10 with that had the dot code.

11 Q. The dot code is not something that is required or is even  
12 now envisioned by California's microstamping requirement?

13 A. To my understanding, correct.

14 Q. Okay. And then, I think I said this before, you tested  
15 five other semi-automatic pistols of different -- by different  
16 manufacturers; correct?

17 A. Correct.

18 Q. And for the centerfire, the five centerfire pistols, do  
19 you recall the manufacturers?

20 A. Not off the top of my head, but they're on the following  
21 page of my report, on page 20.

22 Q. Does Seecamp, AMT Backup, Sig Sauer, and Colt 1911 --  
23 (The court reporter interrupted.)

24 BY MR. SAROSY:

25 Q. Does Seecamp, AMT Backup, Sig Sauer, and Colt 1911 sound

1 familiar?

2 A. Yes.

3 Q. And I'm going to move you to page 27, directly under the  
4 subheading that says, "Seecamp."

5 A. Yes.

6 Q. And can you read that first sentence for me?

7 A. "The alphanumeric characters on the Seecamp firing pin  
8 showed negligible degradation over the course of test-firing  
9 394 rounds of ammunition."

10 Q. And I'm going to have you read a couple more sentences.  
11 But just to take a step back, these findings are about the  
12 condition of the engraved microstamp on the firing pin itself;  
13 correct?

14 A. Just to clarify what section we are in, this one was --  
15 this particular section and those statements are not about the  
16 legibility of the transferred characters but the durability and  
17 legibility of the characters on the firing pins themselves?

18 Q. All right. I just want to be sure.

19 A. Yes.

20 Q. We'll get to legibility of the transfer momentarily.

21 I am going to take you to the next page, page 28, looking  
22 at subheader "AMT Backup."

23 And can you read that entire paragraph, that entire first  
24 paragraph, please?

25 A. Yes. "The appearance of the alphanumeric characters was

1 softened after firing ten rounds. Both the A and the 3 showed  
2 slight deformation after the completion of test-firing 600  
3 rounds of ammunition. The left side of the A began to collapse  
4 toward the center of the character, and the number 3 was  
5 slightly flattened and gained in height by approximately 28  
6 microns. Both of these characters were still legible."

7 Q. So despite the deformation, they were -- like you said in  
8 that last sentence, they were still legible; correct?

9 A. Yes.

10 Q. And I am going to move you to the next section of the  
11 Sig Sauer.

12 Can you read the first two sentences of that section,  
13 please?

14 A. Yes. "The alphanumeric characters on the Sig Sauer firing  
15 pin showed signs of softening after ten rounds of ammunition  
16 had been fired. Throughout the remainder of 1,000 rounds  
17 test-fired, no major signs of character degradation or  
18 deformation were noticed."

19 Q. Can I move you to page 29, in the Colt 1911 section?

20 A. Yes.

21 Q. And the second paragraph, can you actually read that  
22 entire paragraph?

23 A. Yes. "The softening of the appearance of the alphanumeric  
24 characters on the Colt 1911 firing pin was not noticed until  
25 100 rounds of ammunition were fired. At this point in the



1 test-firing sequence, a large quantity of foreign debris had  
2 been deposited around the alphanumeric characters. By  
3 completion of test-firing at 750 rounds fired, no major  
4 degradation of the alphanumeric characters was noticed;  
5 however, a large quantity of foreign debris was present around  
6 the characters, making the number 3 difficult to visualize."

7 Q. And so despite the softening and the foreign debris, it  
8 was -- the firing -- or the microstamp on the firing pin was  
9 still legible; correct?

10 A. That is correct.

11 Q. And I believe for the rimfire pistol, the Ruger -- sorry.  
12 I am going to turn you back to page 26. I believe that was the  
13 rimfire one.

14 A. Yes.

15 Q. Does that sound familiar?

16 A. That is correct.

17 Q. And I think for that rimfire one, there were signs of  
18 degradation; correct?

19 A. That is correct.

20 Q. But you also said that the quality of the alphanumeric  
21 characters on the firing pin were inferior to those found on  
22 the rest of the firing pins tested?

23 A. Yes.

24 Q. Is that correct?

25 A. That is correct.

1 Q. Okay. I want to be sure I can get this done in five  
2 minutes. I think I can.

3 But we can take a break, Your Honor.

4 THE COURT: No. Let's complete this witness before  
5 we take our lunch break.

6 BY MR. SAROSY:

7 Q. Okay. So we talked about the firing pins themselves. I  
8 am going to talk about the part of your study that looked at  
9 the legibility of the microstamp when it was transferred to the  
10 cartridge case. That was also part of your study; correct?

11 A. That is correct.

12 Q. And I want to look at page 23 -- well, I'll just ask you,  
13 actually. For something to be counted as a positive transfer  
14 from the firing pin to the cartridge case, it had to be fully  
15 legible; is that correct?

16 A. Yes.

17 Q. That was your criteria or your method, right, --

18 A. Yes.

19 Q. -- for determining legibility?

20 A. My criteria had to be that it looked as the character it  
21 was intended to be.

22 Q. Right. So an A looked like an A; a C looked like a C?

23 A. That is correct.

24 Q. And I am going to turn you to page 32. And you also  
25 looked at the transfer for the six Smith & Wesson pistols;

1 correct?

2 A. That is correct.

3 Q. And if you are looking at that section on 32, page 32,  
4 that is entitled Smith & Wesson model 4006, can you look at the  
5 second paragraph and read those first three sentences, please?

6 A. Yes, sir. "The alphanumeric characters for the cartridge  
7 cases from all six firing pins showed an average overall  
8 transfer rate of 90 percent. The percent transferred for any  
9 one cartridge case ranged from a complete transfer of  
10 100 percent to as low as 38 percent transfer. The crispness of  
11 the alphanumeric characters' impressions were diminished  
12 through continued firing."

13 Q. To make sure I understand that, that means that, on  
14 average, over 90 percent of the cartridge cases had a legible  
15 microstamp on them, based on this?

16 A. That meant that, if there were, let's just say, ten  
17 characters, that, on average, nine of them were legible. So  
18 90 percent of the characters that were present on the firing  
19 pin transferred.

20 Q. Okay. And is it true that for the other, for the Seecamp,  
21 the AMT Backup, the Sig Sauer, and Colt 1911, the overall  
22 transfer rate was, at least, 76 percent? Ballpark, it was 76  
23 percent or more for the four centerfire semi-automatic pistols?

24 A. That is correct.

25 Q. And for three types of those pistols -- so it was --

1 sorry. Including the six Smith & Wessons. So for the six  
2 Smith & Wessons, the AMT Backup, and the Sig Sauer, the overall  
3 transfer rate was at least 90 percent; correct?

4 A. That is correct.

5 Q. And if you can look at page 43 --

6 These will be the last couple questions, Your Honor.

7 And I am looking at the second complete paragraph on that  
8 page that starts with "The concept of laser machines."

9 A. Yes.

10 Q. Do you see that?

11 Can you read the second sentence of that paragraph, that  
12 starts with "Overall"?

13 A. "Overall the alphanumeric characters and the gear code  
14 structures proved to be capable of withstanding repeated  
15 firing; however, some degradation of the structures was seen  
16 with specific firearms."

17 Q. And does that finding of some degradation with specific  
18 firearms, does that include the rifles and shotguns that you  
19 tested?

20 A. That is correct. That is an overall statement for the  
21 firearms tested within my research.

22 Q. That statement is not limited to the semi-automatic  
23 pistols that you tested; correct?

24 A. That is correct.

25 Q. And can you turn to page 44, please. And I am looking at

1 the last paragraph on that page that starts with the  
2 "Alphanumeric encoding."

3 A. Yes.

4 Q. Can you read that sentence, please?

5 A. "The alphanumeric encoding format is currently the only  
6 one of the three encoding structures utilized on the 2nd  
7 Generation firing pins that will allow for potential  
8 identification of a firearm."

9 Q. And so your study concluded, in 2008, that the  
10 microstamping of alphanumeric characters from a firing pin was  
11 technologically feasible; is that correct?

12 A. With the firearms tested, correct.

13 Q. And you tested, like we said, six Smith & Wessons and then  
14 one rimfire semi-automatic pistol and then four centerfire  
15 semi-automatic pistols from a few manufacturers; correct?

16 A. Correct.

17 MR. SAROSY: Okay. That's all I have, Your Honor.

18 Actually -- I'm sorry -- I would like to move that study  
19 into evidence as well.

20 THE COURT: Any objection?

21 MR. DALE: No objection.

22 MR. SAROSY: I'll put that as Defendant's Exhibit --  
23 I think we're at 27.

24 THE COURT: Very well. Exhibit 27 will be received  
25 into evidence.

1 MR. SAROSY: Thank you, sir.

2 (Exhibit 27 was received into evidence.)

3 THE COURT: Redirect?

4 MR. BRADY: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BRADY:

7 Q. So, Mr. Beddow, you testified that microstamping  
8 technology that you studied was, quote, "feasible." You used  
9 that word; right?

10 A. That is correct, yes.

11 Q. Is microstamping that be can adopted and implemented by  
12 commercial manufacturers of handguns -- is that feasible? A  
13 technology that can right now be taken, like a software that  
14 can be downloaded onto any computer, various different types of  
15 computers, is there a microstamping technology that is feasibly  
16 able to just be taken by a manufacturer today, that you could  
17 send it to them, they could drop it into their handgun?

18 A. I do not believe so without the applied R&D to the  
19 specific mechanism for those firearms. Conceptually, the idea  
20 of the transfer works and was proven by my research, but the  
21 application to every combination of firearm and mechanism needs  
22 to be further looked into or further researched.

23 Q. So am I understanding that, when you say it's feasible,  
24 are you saying that there have been studies, including yours,  
25 where a microstamp has successfully transferred to a shell

1 casing, to an ammunition casing. But that's what you mean by  
2 "feasible," that it can be done.

3 That, for example, a car could be made to levitate, right,  
4 in a prototype, but are there floating -- elevating cars able,  
5 ready to be put out on the market?

6 So my question is: Are you saying that it's feasible in  
7 the sense that it is conceptually feasible to make a microstamp  
8 transfer?

9 A. Yes.

10 Q. But it is not practically, as we sit here today, a  
11 technology that is capable of being taken by a manufacturer and  
12 implemented into their handguns right now, without further  
13 development for their specific handgun?

14 A. That is correct.

15 Q. Does the fact that only one microstamp is now required  
16 versus when you -- well, let me ask you this.

17 There was no two-stamp requirement when you performed your  
18 study; correct?

19 A. To my recollection, no.

20 Q. You were only looking for a single --

21 A. I only researched the location of the microstamping on the  
22 firing pin and no subsequent locations.

23 Q. So does the fact that California has retracted its  
24 two-stamp requirement and now only requires one, does that  
25 alter your conclusions that you testified here today in any

1 way?

2 A. No. As long as that location is the firing pin, since  
3 that's the only area which I performed any research. That is  
4 all I can testify to.

5 Q. In your study, did you use a single source of ammunition  
6 to stay constant with all the firearms you used?

7 A. No. I tried varying brands.

8 Q. You tried varying brands?

9 A. Yes.

10 Q. And that made a difference in the legibility?

11 A. Yes.

12 Q. So some -- so ammunition can be a factor in whether a  
13 microstamp transfers; correct?

14 A. That is correct.

15 Q. Other -- of the firearms you evaluated, did you testify  
16 that there were issues with wear on the firing pin on some of  
17 them?

18 A. Yes.

19 Q. And was that firearm-dependent or ammunition-dependent, to  
20 your knowledge? Or did you not control for that?

21 A. I don't believe there was any way for me to test if the  
22 wear that was -- that the firing pins incurred was a result of  
23 a mechanism of the firearm or the ammunition. The wear or  
24 softening, as I read in some of the statements previously, that  
25 would have only been able to be incurred through the impact



1 with the ammunition. Whereas the wear that I noticed on the  
2 radial barcodes, that was a function of the firing pins  
3 impacting the firearm itself.

4 Q. Okay. And did the wear happen at different rates on the  
5 different firearms?

6 A. Yes.

7 Q. Is it accurate that, in your study, the majority of the  
8 firearms that you evaluated with microstamping technology did  
9 not provide adequate or satisfactory transfer of microstamping?

10 A. There was no criteria set forth of what was a satisfactory  
11 or what would be listed as a successful transfer. It was  
12 purely given in a numerical format of percent of transfer.

13 MR. DALE: Understood. Thank you very much. No  
14 more.

15 THE COURT: Anything further?

16 MR. WOODS: Your Honor, I have two or three more  
17 questions.

18 RECROSS-EXAMINATION

19 BY MR. SAROSY:

20 Q. I think I heard a question about flying cars. Just to be  
21 sure I understand correctly, in your study, the firing pins  
22 that you tested actually had alphanumeric codes laser-engraved  
23 on the firing pins; correct?

24 A. Yes.

25 Q. Which then transferred alphanumeric characters to

1 cartridge cases; correct?

2 A. That is correct.

3 Q. This is not -- you actually tested microstamping. This is  
4 not a theoretical thing that we are talking about; correct?

5 A. Correct.

6 Q. And the firing pins were not provided to you by firearm  
7 manufacturers; correct? They were provided by -- I forget from  
8 who. I guess, who were the firing pins provided to you by?

9 A. The individual's name was Todd Lizotte. He, to my  
10 understanding, is the co-inventor of the technology through a  
11 company known as ID Dynamics, at the time.

12 Q. Okay.

13 A. He is the one and his business were those ones who  
14 conducted the laser-engraving for me.

15 Q. Okay. The microstamp laser-engraved on a firing pin is  
16 something that is physically possible; correct?

17 A. Correct.

18 Q. And it is physically possible for that microstamp or the  
19 alphanumeric characters to be physically transferred to a  
20 cartridge case; correct?

21 A. Correct.

22 Q. Because you actually saw that in your study?

23 A. Yes.

24 Q. Did any firearm manufacturers ever approach you about the  
25 findings of your study based on your comment that firearm

1 manufacturers should work collaboratively with the California  
2 Department of Justice?

3 A. No.

4 Q. Are you aware of any California law saying that the  
5 microstamp cannot be placed on the firing pin?

6 A. No.

7 MR. SAROSY: All right. That's all I have. Thank  
8 you.

9 THE COURT: Sir, you may step down. You are excused.  
10 All right. It is 12:20. We'll take an hour lunch break.  
11 Can you give me a sense of how much longer you think we're  
12 going to need with witnesses?

13 MR. DALE: We have one more witness. He's probably  
14 going to take about ten minutes on Direct. I don't know about  
15 Cross. But then he may have a little bit of rebuttal testimony  
16 after their two witnesses testify.

17 THE COURT: All right. And defense just has two  
18 witnesses?

19 MR. SAROSY: Correct, Your Honor.

20 THE COURT: How long do you think they'll be?

21 MR. SAROSY: I think for the first witness, which is  
22 Special Agent Supervisor Sal Gonzalez, I would say 30 to 45  
23 minutes, perhaps. He's our roster expert.

24 And then for Dr. Cornell --

25 MR. WOODS: I would say 10 to 20 minutes.

1 THE COURT: Okay. I have another matter at 4:00.  
2 You don't think we'll run into any problem with that?

3 MR. DALE: I don't anticipate that.

4 MR. WOODS: I don't think so. I know that Your Honor  
5 had mentioned you wanted some argumentation as well.

6 THE COURT: Well, we'll see where we're at. Okay.  
7 All right. Sounds good. Have a nice lunch break, and we'll  
8 pick back up at 1:20.

9 (Lunch recess was taken.)

10 THE COURTROOM DEPUTY: Please come to order. This  
11 Court is again in session.

12 THE COURT: All right. I think we're still in the  
13 Plaintiffs' case. Next witness.

14 MR. DALE: Yes, Your Honor. We're going to call  
15 Clayton Cramer.

16 THE COURT: Very well.

17 THE COURTROOM DEPUTY: Mr. Cramer, please raise your  
18 right hand.

19 Do you solemnly swear that the testimony you shall give in  
20 the cause now before this Court shall be the truth, the whole  
21 truth, and nothing but truth, so help you God?

22 THE WITNESS: I do.

23 THE COURTROOM DEPUTY: Please state your name and  
24 spell your last name for the record.

25 THE WITNESS: Clayton Carl Cramer. My last name is

1 spelled C-r-a-m-e-r.

2 THE COURT: Please proceed.

3 CLAYTON CARL CRAMER,  
4 called by and on behalf of Plaintiffs, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DALE:

7 Q. Good afternoon, Mr. Cramer. Thank you for joining us  
8 today.

9 A. Hey. No problem.

10 Q. All right. Can you tell me what is your current  
11 profession, sir?

12 A. I'm retired, but I also teach at Community College of  
13 Western Idaho, a community college here in Boise.

14 Q. And what subjects do you currently teach?

15 A. I teach American History first semester and world History  
16 this semester. I also have written nine books. And my work is  
17 cited in *D.C. versus Heller* and *McDonald versus Chicago* and a  
18 dozen or more decisions by lower courts.

19 Q. All right. You said you've written book. Let's talk  
20 about some of those books.

21 Did you write a book called *Lock, Stock, and Barrel*?

22 A. Yes.

23 Q. And what's that book about?

24 A. Well, the book was published several years ago that made  
25 claim that guns were pretty much only widespread ownership

1 after Samuel Colt figured out how to make handguns cheap and  
2 reliable. So this is a claim that's been made before, some  
3 years -- about 20 years ago, which turned out to be false at  
4 the time.

5 And I went through this new book by Pamela Haag, called  
6 the *Gunning of America*. And I eventually checked all of her  
7 references and discovered many of her claims turned out not to  
8 be true. Many issues cherry-picking her evidence. For some  
9 reason, you read something on one page and go over on what was  
10 on the previous page.

11 But what I was doing was basically how American gun  
12 culture developed and all the evidence of which guns were in  
13 existence.

14 Q. So is *Lock, Stock, and Barrel* the only book you've written  
15 regarding gun culture?

16 A. No.

17 Q. Did you write a book called, *Armed America: The*  
18 *Remarkable Story of How and Why Guns Became as American as*  
19 *Apple Pie*?

20 A. Yes, I did. That was in response to a book called *Arming*  
21 *America*, which was, briefly, a very popular, illusory,  
22 well-known book by a guy named Michael Bellesiles, which made  
23 the claim that guns were rare in America and Mexico, that  
24 Americans did not hunt. And for the most part, that's been  
25 tightly regulated.

1           It was such an astonishing and amazing book, but the fact  
2           is that it turned out to be largely fabrication, no one  
3           bothered to actually check that except for me and a few other  
4           people. And eventually Mr. Bellesiles lost his position as a  
5           member of the faculty at Emory University after they  
6           investigated the claim and found that, in fact, he had lied  
7           about a lot of stuff in the book.

8           So I also wrote another book called *For the Defense of*  
9           *Themselves and the State*, which I examined in detail all of the  
10          decisions of the state courts and some of the federal court  
11          decisions about the meaning of the right to arm positions in  
12          both the Federal Constitution and in the State Constitutions.

13         Q. Did you write a book called *Concealed Weapon Laws of the*  
14         *Early Republic: Dueling, Southern Violence, and Moral Reform?*

15         A. Yes. That was my master's thesis, and it examined in  
16         detail exactly why concealed weapon laws first appeared in  
17         mostly southern states.

18         Q. All right. I am going to show you a document here. Hang  
19         on for a quick second while I figure this out.

20                 Thank you. All right. Can you see that document,  
21         Mr. Cramer?

22         A. Yes, I can. It looks like my resume.

23         Q. Okay. And just to make this process, hopefully, a little  
24         shorter for everybody, I am just going to take you through it  
25         really quick. I want to make sure that this identifies your

1 history in terms of teaching.

2 Does that accurately reflect your history as a teacher?

3 A. Yes, does.

4 Q. Okay.

5 A. The one thing I might add is I taught History of the  
6 Fourteenth Amendment a couple sessions back in the College of  
7 Western Idaho.

8 Q. Okay. And going a little bit further down, we see a list  
9 of books. I'm assuming -- is this a document you prepared,  
10 Mr. Cramer?

11 A. Yes, it is.

12 Q. Okay. And this list of books here, does this accurately  
13 reflect the books that you've published?

14 A. Yes, it does.

15 Q. Okay. And then below that, in your CV, it lists selected  
16 publications.

17 Are these law review articles you've written?

18 A. Yes. Those are entirely law review articles.

19 Q. Okay. And what topics have you written law review  
20 articles on?

21 A. I've written law review articles about -- well, obviously,  
22 the first one about the problem of fraudulent claims being made  
23 by some historians who are attempting to revise American  
24 history when it doesn't match with the facts.

25 One of these articles was about the problems of mental



1 illness and what are the limits of the right to bear arms with  
2 respect to people with mental illness problems.

3 And a little further down, this one is co-authored with  
4 Nicholas Johnson and George Mocsary. This was cited in  
5 *McDonald v. Chicago*, 2010.

6 Q. Go ahead.

7 A. *McDonald v. Chicago* here we made the argument that the  
8 Fourteenth Amendment was intended to impose oppose the Bill of  
9 Rights through the privileges and immunities clause of the  
10 Fourteenth Amendment on to the states.

11 Q. And you said it was cited. Are you talking about the  
12 Supreme Court Case, *McDonald v. Chicago*?

13 A. Correct, yes.

14 Q. And was it cited in the majority opinion?

15 A. Yes, the majority opinion, yes.

16 Q. Has any of your work been cited in any other appellate  
17 court opinions that you're aware of?

18 A. I know it has -- I can pull it up, briefly. Yeah. But,  
19 yes, my work is cited in quite a few decisions.

20 Q. Okay. Well, I don't want you to pull anything up. Let's  
21 just work off the documents we have at hand.

22 But let's go down a little further. I just want to make  
23 sure I have everything.

24 Does this list accurately reflect the law review articles  
25 and other articles you've authored?

1 A. There is probably -- I think there is a couple that are  
2 probably not present there. Basically, I've generally tried to  
3 avoid adding too much stuff there, because it makes the CV get  
4 too long.

5 Q. Understood. Understood. And below that, you have a  
6 section that you wrote called "Conferences and Expert  
7 Testimony." And these were presentations that you gave, at  
8 some point?

9 A. Yes. As various states were considering -- were  
10 discussing revisions of the concealed weapons gun laws. I  
11 went, and I spoke about what my research had found about the --  
12 what happened to the murder rate as a result of the states that  
13 have adopted shell issues for weapon and gun laws. And for the  
14 most part, murder rates would have fallen, and those states  
15 shouldn't have done that.

16 Q. All right. And then, finally, you wrote a section that we  
17 were just discussing work cited in court decisions.

18 Does this accurately reflect the appellate court decisions  
19 in which your writings in one form or another have been cited?

20 A. Yes.

21 Q. All right. And what are the topics upon which your  
22 writings have been cited in those appellate court decisions?

23 A. Well, in many cases, they've been cited to demonstrate  
24 that certain categories of prohibitions on possession of  
25 firearms are actually Constitutional. In particular, the --

1 some of the cases that involved people convicted of domestic  
2 violence misdemeanors. Courts have heard challenges to those  
3 and cited work by -- I can think to myself -- arguing that  
4 these sort of limitations on possession are not unreasonable.  
5 They're not unconstitutional. They're consistent with the  
6 values and the laws that were present at the time of the  
7 ratification of the Constitution.

8 MR. DALE: All right. At this time, I would like to  
9 offer and move into evidence Plaintiffs' Exhibit 8.

10 THE COURT: Any objection?

11 MR. WOODS: No objection.

12 THE COURT: All right. Exhibit 8 will be received  
13 into evidence.

14 (Exhibit 8 was received into evidence.)

15 BY MR. DALE:

16 Q. All right. Well, thank you for that.

17 Let me ask you just one more question with regards to your  
18 background. Have you ever been designated an expert witness in  
19 any other case involving the interpretation of firearms laws?

20 A. Yes. *Barrett v. Bonta* in 2021, another District Court  
21 case. And I gave a deposition on an expert declaration in  
22 Oregon Firearms Federation last week.

23 Q. All right. And in the *Barrett v. Bonta* case, what was  
24 your area of expertise you were designated for?

25 A. Well, it was the history of laws regulating the carrying

1 of firearms. California had, I guess, recently passed a  
2 requirement that you had to have a license to carry openly,  
3 which is really quite dramatic changes. Until 1967, you can  
4 carry openly, even in the cities, a loaded firearm.

5 Q. So let me ask you: In providing expert testimony, in  
6 writing books, in preparing law review journals, where do  
7 you -- what training or what experience do you draw upon to  
8 create these writings or to give the testimony?

9 A. Well, my bachelor's degree is in history and my master's  
10 degree is in history. And I have spent, I would say -- from  
11 1989 forwards, I've spent just about all of my spare time  
12 reading and researching issues related to the history of  
13 weapons regulations in America.

14 Q. Going back how far, sir?

15 A. To 1989.

16 Q. No. I mean, the history of regulation. How far back have  
17 you researched in terms of the history of America?

18 A. To the settlement of Jamestown in the Plymouth.

19 Q. All right. And have you actually researched past laws and  
20 various colonies or the early founding states?

21 A. Absolutely. I have -- at one point, I someone paid me  
22 to -- I might have been done it for free, if he'd asked right.  
23 I read through every session law adopted during the  
24 Revolutionary and Articles of Confederation period in all the  
25 states plus Vermont.

1 Q. Have you've used this information as part of forming  
2 opinions that you have put into law review articles?

3 A. Yes.

4 Q. Okay.

5 A. In some cases, my research has led me to throw away  
6 distant hypotheses and come up with an entirely new theory for  
7 why things happened.

8 Q. Can you give me an example of that, sir?

9 A. Well, I started working on my master's thesis, *Concealed*  
10 *Weapon Laws of the Early Republic*. I assumed that, at least  
11 part of why these laws were adopted, when they were largely in  
12 the United States, was related to the issue of slavery and  
13 race. But the more I got into it, the more I discovered that  
14 it actually had an entirely different origin, and it was tied  
15 to the fact that an honor, culture, and development had  
16 transcended from Scotland into the back hills area of the  
17 South.

18 And then, in a fairly complicated way, the attempt to  
19 suppress dueling led to an attempt to ban concealed carry  
20 weapons because, if you got into an argument with someone, if  
21 you knew they were armed, you weren't going to go ahead and  
22 continue to be confrontational. You don't know if they were  
23 armed. They might draw a weapon or knife on you. And so this  
24 led to a big problem with dueling.

25 If someone insulted you or took liberties with your wife,

1 or whatever, you might challenge them to a duel. Of course,  
2 dueling was a big problem. So many states went ahead and  
3 made -- required you to swear an oath that you would not duel  
4 or be involved in any way or, like, carry out a challenge or  
5 something, usually have to think through things.

6 And what would happen is, every few years, someone would  
7 get elected to the Legislature, and they would have to revise  
8 that day forward, because this guy had -- didn't want to  
9 perjure himself about having participated in a duel.

10 And so we had this weird situation where people were more  
11 willing to kill someone than to perjure themselves about  
12 whether they had participated in dueling or something like  
13 that. As I said, it was completely not what I was expecting to  
14 find.

15 Q. And that caused you to change your opinion on that  
16 particular issue? Is that what you are saying today?

17 A. Yes. That particular set of laws, the concealed weapon  
18 laws that were adopted before the Civil war, had a different  
19 origin than I expected.

20 Q. All right. Do you understand what you are here to testify  
21 about today?

22 A. Yes.

23 Q. And do you understand what the California Unsafe Handgun  
24 Act is?

25 A. I have read a bit about it. It has a drop-test

1 requirement, and it also has a microstamping requirement with a  
2 firing pin, and it also has a loaded chamber indicator  
3 requirement on firearms. And there's this complicated roster  
4 scheme, whereby, as I understand it, for every one gun that  
5 gets added to the roster, -- and, therefore, it's legal to sell  
6 in California -- two have to be taken off.

7 Q. Okay. So let's talk about that last part. Explain to me  
8 what you mean by, two have to come off if one is added?

9 A. My understanding was that, if the manufacturer wanted to  
10 have one added to the roster, that two additional ones would  
11 have to age off or in some way cease to be on the list.

12 Q. Would that include new guns on the roster or grandfathered  
13 guns? Do you have any understanding of that?

14 A. It's been so long since I read the law. I do not remember  
15 the details of how they decided which ones should go away.

16 Q. Okay. And in your work, have you ever come to an  
17 understanding of the tests for measuring the constitutionality  
18 of a law that was identified in the case of *New York State*  
19 *Rifle and Pistol Association versus Bruen*?

20 A. I, of course, have read the Bruen decision. And  
21 generally, the work I've been doing the last few months, I've  
22 been looking at what laws were in effect in 1789 when the Bill  
23 of Rights was passed by Congress and also what laws were in  
24 effect before 1868 when the Fourteenth Amendment was ratified.

25 Basically, the Bruen decision went ahead and, basically,

1 set those magic dates, to a large extent, actually to find  
2 whether some law or analogue was constitutional was under the  
3 Second Amendment.

4 Q. All right. Were you asked by us to determine whether or  
5 not there were any laws you could find that were historical  
6 analogues to the drop-testing feature -- or the drop-testing  
7 requirement of the Unsafe Handgun Act?

8 A. Well, I would say, the closest to that would probably be  
9 the proofing laws, that some states adopted, requiring  
10 firearms -- firearm barrels had to be proof verified they were  
11 safe before they could be assembled into guns. Although those  
12 are not exactly equivalent.

13 Q. Well, as part of the work you've done, did you research  
14 proofing laws in the various jurisdictions during the founding  
15 or thereafter?

16 A. Well, what I found was, in the 17th century in England,  
17 the role of gunmakers, Guttea [sic] chartered to authorize them  
18 to, basically, go searching anywhere they wanted to look for  
19 guns that had not been proofed. But they, of course, were in  
20 town to make sure that only the guns that they made, which had  
21 been tested and stamped with their mark of approval, would be  
22 lawful for people to possess or to sell.

23 Q. And in doing your research, did you ever learn any  
24 information or come to any conclusions as to why these laws  
25 were enacted?



1 A. In the case of England, the sensible claim was that it was  
2 to make the guns safer. It's certainly possible, although both  
3 throughout the medieval and in the modern period have just  
4 released partially a string of associations for the purpose of  
5 limiting the competition.

6 There is one case that I ran into. I was in New York at  
7 Colonial Records where shoemakers had a guild in New York City.  
8 They were complaining that a new guy is coming into town, He  
9 was not a member of the guild, and he was making shoes. They  
10 went to the Governor and said, "You've got to stop this guy."

11 The Governor's response was, "Under our mercantile laws,  
12 we're not supposed to be making shoes in America. We're  
13 supposed to be shipping leather to England so they can make  
14 shoes and sell them back to us." And he said, "Do really you  
15 want to go ahead and appeal this to London?"

16 And the shoemakers said, "Ah, never mind."

17 Q. So let me ask you, other than a potential safety analogue  
18 for the drop test, are you aware of any other laws that are  
19 analogous to the drop-testing requirement based on different  
20 factors other than safety?

21 A. I am not aware of any, no.

22 Q. Okay. And then features that show that a firearm is  
23 loaded with ammunition, are you aware of any laws that existed  
24 back at the founding or up through the adoption of the  
25 Fourteenth Amendment that, where a state or a locality required

1 that there be some device on a firearm, that would indicate if  
2 there was ammunition in the chamber?

3 A. I have never seen anything like that. In the long shot, I  
4 think there were people who have enough intelligence to realize  
5 you need to check the chamber or check the -- open up the  
6 holder on the revolver to see if there is ammunition in there  
7 or not. If someone can't be trusted with that, they probably  
8 shouldn't own a gun. They probably shouldn't, also, be driving  
9 a car because I'm not sure I would trust them to make good  
10 decisions on that either.

11 Q. But there is no law or regulation you're aware of that  
12 required that in any locality?

13 A. No.

14 Q. Are you aware of any law or regulation during that time  
15 period that is important in the Bruen test where the law or the  
16 regulation required that features be put on a firearm so that  
17 it wouldn't fire in certain positions, such as if it didn't  
18 have a magazine?

19 MR. WOODS: Objection, to the extent it goes to the  
20 ultimate issue.

21 THE COURT: Overruled.

22 THE WITNESS: I have never seen any such law before.  
23 Part of it is the magazine disconnectors that were mentioned  
24 this morning are a fairly recent innovation, and I would not  
25 say a particularly good one. I can't remember his name, the

1 guy that testified first this morning. He mentioned about the  
2 trigger.

3 I can tell you the Browning Hi-Power that I own, the  
4 magazine disconnecter uses an eight-and-a-half-pound trigger to  
5 a four-and-a-quarter-pound trigger pull, which makes it a  
6 vastly more accurate. As far as I'm concerned, if you are more  
7 accurate with the gun, that makes it much safer with that gun  
8 for everyone around you.

9 BY MR. DALE:

10 Q. And when you are talking about trigger pull, you are  
11 talking about the amount of pressure that a person needs in  
12 order to pull the trigger to get the firing pin to strike the  
13 primer; correct?

14 A. Exactly.

15 Q. Okay. And then, in looking at the laws that you've  
16 studied from the periods that are important to Bruen, from the  
17 founding up through the adoption of the Fourteenth Amendment,  
18 did you find any laws that required that a unique registration  
19 mark be put on the ammunition of a firearm?

20 A. No. And part of it is that I don't think technology at  
21 the time would have even made that possible. These very small  
22 numbers that are stamped onto the firing pin, that conform to  
23 the microstamping requirement, are actually really tiny. Try  
24 to imagine making it with tools that were readily available in  
25 the 19th century.

1 Q. What about registration marks on the firearm itself? Were  
2 there any laws during that period that required that?

3 A. No. I got an e-mail from the Henry Rifle Company. They  
4 are the -- they have -- there is a museum Back East associated  
5 with the Henry Rifle Company that made many rifles in the  
6 United States in the late 18th to early 19th century.

7 And the curator of the museum told me that serial numbers  
8 were fairly uncommon on firearms in the U.S. until the Civil  
9 War period and later.

10 If you go onto websites that sell antique guns, you'll see  
11 a lot of them marked "NSN," no serial number.

12 Q. Let me ask you about -- let's go back to registering  
13 pieces of ammunition or boxes of ammunition. Has there ever  
14 been a law, other than the current California law regarding  
15 ammunition registration, that you're aware of where individual  
16 boxes of ammunition would be registered?

17 A. Well, I can tell you, when I first bought handgun  
18 ammunition in Orange County about 1985, at the time there was a  
19 still a federal law that required that you had to fill in a  
20 disposition slip of some sort at the gun store, where they  
21 would identify who you were, what your age was, and that you  
22 were buying ammunition of a particular caliber. But it was not  
23 registration. There was no number on the box. There was  
24 nothing to uniquely identify the ammunition in the box.

25 And I believe that law disappeared, because I have never

1 had to show my ID again after that. I believe the Firearm  
2 Owners' Protection Act of 1986 might have removed that  
3 requirement.

4 Q. Okay. Do you know when that requirement for registering  
5 ammo federally came into effect?

6 A. I am not exactly sure.

7 Q. Was it at any period during the founding or up through the  
8 adoption of the Fourteenth Amendment?

9 A. It was most unlikely, because -- I feel like I'm  
10 struggling a little. I had a stroke in 2014, and there are  
11 times that it shows.

12 The first federal firearms law that I'm aware of is the  
13 Nonmailable Firearms Act of 1927. I am not aware of any  
14 federal law regulating gun ownership or possession or anything  
15 of the sort before that Act was passed.

16 Q. 1927?

17 A. Yes.

18 Q. Okay. And, finally, I want to ask you, in doing the task  
19 we asked you to do, looking for laws that were potentially  
20 historical analogues, did you find any state or local laws that  
21 required that features be put on firearms such that residents  
22 of one state or locality could not obtain those firearms but  
23 the rest of the states or the rest of the colonies, their  
24 citizens could get those?

25 A. Not firearms. They had the period or issue where some

1 states have banned or in some cases engaged in extraordinarily  
2 high taxes to discourage using Arkansas toothpicks, which was  
3 two types of fighting knives that were unfortunately a little  
4 bit too popular in the period before the Civil War.

5 Q. So let me ask you: How many jurisdictions were you aware  
6 that put that sort of restriction on, at least, those fighting  
7 knives?

8 A. Six or seven. If I had to, I could probably think about  
9 it for a while and give you a complete list of all of them.  
10 These bans were never terribly widespread.

11 Q. Do you recall reading the outlier language in the Bruen  
12 decision?

13 A. There is the outlier language that indicates that some of  
14 these laws were present in a few cities and a few territories  
15 that represented a very small percentage of the U.S. population  
16 are not terribly indicative of what we should consider to be a  
17 prevailing view of what those laws were at the time. These  
18 were a very tiny minority of jurisdictions, and many of these  
19 laws did not survive for very long.

20 I can tell you that -- unknown territory had restricted  
21 gun-carrying laws, and the territorial period did not survive  
22 into statehood. The United States Supreme Court ended up  
23 striking down some of those laws in a case called *In Re*  
24 *Brickey*, 1902.

25 Q. And, for example, you cited Bowie knife laws. Based on

1 your understanding of the outlier language you just described,  
2 have you formed an opinion as to whether the Bowie knife laws  
3 that prohibited certain places from their citizens from having  
4 Bowie knives but allowed a lot of other places to have them,  
5 whether or not that would be considered an outlier, under your  
6 understanding of Bruen?

7 MR. WOODS: Objection. Goes to the ultimate issue.

8 THE COURT: Overruled.

9 THE WITNESS: May I go ahead and answer that?

10 MR. DALE: Yes.

11 THE COURT: You may.

12 THE WITNESS: I don't consider those to be outliers.  
13 I mean, this was not -- these were not remote parts of the  
14 United States. These were familiar -- a number of states that  
15 had significant populations in them, so they were not ruled the  
16 outliers for Bruen.

17 BY MR. DALE:

18 Q. Let me ask you about some other laws. We previously  
19 provided you some exhibits that were produced to us by the  
20 Department of Justice.

21 And do you recall reviewing those exhibits?

22 A. You mean the ones showing the firing pin? That one?

23 Q. No, no, no. I'm talking specifically about the exhibit  
24 they provided that included copies of historical laws.

25 A. Right, Exhibit 24. Yeah. I got it in front of me.

1 Q. Go ahead and take it off your screen, please, because I  
2 don't want you to testify from it yet.

3 A. Okay.

4 Q. Thank you. So one of those laws in there is a powder law.  
5 Do you recall that law?

6 A. Gunpowder storage laws. There are a number of those,  
7 including a number that are not in the exhibits, that I have  
8 found.

9 Q. And would you consider gunpowder storage laws, under your  
10 understanding of the Bruen test, to be analogous to any of the  
11 requirements of the Unsafe Handgun Act?

12 A. No. What's interesting is that many states and localities  
13 have gunpowder storage laws not so terribly different from  
14 these. When I lived in California, the northern part, before I  
15 purchased ammunition, I wanted to verify with the police  
16 department if there was any limitation on the amount that I  
17 could have. The only limitation was I could not have more  
18 than -- I think it was 30 pounds of black powder in my house,  
19 which I considered an unreasonable amount to have in your house  
20 in any case.

21 It turns out that many of the gunpowder storage laws that  
22 were adopted in the period immediately before and after the  
23 Revolution said you could not have more than, typically, 28 or  
24 30 pounds of gunpowder in your home. It has to be stored in a  
25 public magazine because of the safety issues involved.



1 Q. well, but wouldn't that be analogous, for example, with  
2 the drop-safety test, because there is a safety purpose behind  
3 that to protect members of the public.

4 Do you disagree with that?

5 A. I guess I disagreed because the drop-safety test is one of  
6 these things -- there is a more indirect, sort of, risk  
7 involved there. If the gunpowder goes, the risks involving a  
8 fire. And even if you don't drop a gun or do anything like  
9 that, the gunpowder will still be extremely a hazard.

10 Q. All right. And then there were also -- you previously  
11 touched on it, but part of the defendant's exhibits included  
12 some laws regarding proofing.

13 Do you believe that those fit the historical analogue  
14 test, as you understand it?

15 A. They're closer, but not quite. The big difference is  
16 that, there is proofing laws to verify the barrels can  
17 withstand the fire buildup, usually larger barrel loaded with  
18 gunpowder. Those are primarily for the safety of the person  
19 who is going to be purchasing the gun.

20 If a barrel bursts, the person could be hurt, but it is  
21 just the person that is actually holding the gun whereas the --  
22 a lot of these other requirements that are in the California  
23 law are really intended to protect other people as opposed to  
24 these proofing laws, which, I said, are primarily to protect  
25 the person who is holding the gun.

1 Q. All right.

2 A. They're similar, but they're not quite the same.

3 Q. Based on your research, your review of the history, are  
4 you aware of any law that existed at the time of either the  
5 founding up through and including the adoption of the  
6 Fourteenth Amendment that had the restrictions on firearms  
7 ownership that California's Unsafe Handgun Act has?

8 A. None that I can think of, no. There might be out there  
9 somewhere, but I have not seen any of them. I have spent an  
10 awful lot of years going through dusty law books at the  
11 UC Hastings Law Library.

12 MR. DALE: All right. Very good. Thank you for your  
13 time today.

14 I'll tender the witness.

15 MR. WOODS: I have no questions for this witness.

16 THE COURT: Okay, sir. Thank you. You are excused.

17 THE WITNESS: Thank you.

18 MR. DALE: Tell him, if he can stick around, because  
19 we will offer him for rebuttal for Professor Cornell's  
20 testimony.

21 THE COURT: All right.

22 THE COURTROOM DEPUTY: He left. Tell him to log back  
23 in.

24 MR. DALE: Thank you, Judge. I appreciate you  
25 accommodating all of this today.

1 THE COURT: No problem.

2 Is that the last witness?

3 MR. DALE: That is our last witness.

4 THE COURT: Defense.

5 MR. SAROSY: Yes, Your Honor. I'll go get --

6 THE COURT: Great.

7 MR. SAROSY: I'll get Special Agent Supervisor  
8 Gonzalez.

9 THE COURTROOM DEPUTY: Just as a heads-up, I am  
10 muting it for this witness. Okay? Or do they need to listen?

11 MR. DALE: No. It's fine for this witness. He just  
12 needs to listen to Professor Cornell.

13 THE COURTROOM DEPUTY: Okay. So if they reach out to  
14 you, just tell them that they can see us, but it's muted.

15 MR. DALE: All right. I appreciate that. Thank you.

16 THE COURTROOM DEPUTY: You're welcome.

17 THE COURT: Good afternoon, sir.

18 THE WITNESS: Good afternoon.

19 THE COURT: Can you please come forward? Stand right  
20 by our court reporter for a moment. We're going to administer  
21 an oath to you and then have you take the witness stand.

22 THE COURTROOM DEPUTY: Just right there.

23 THE WITNESS: Right here?

24 THE COURTROOM DEPUTY: Raise your right hand.

25 Do you solemnly swear that the testimony you shall give in

1 the cause now before this Court shall be the truth, the whole  
2 truth, and nothing but truth, so help you God?

3 THE WITNESS: Yes, I do.

4 THE COURTROOM DEPUTY: Please be seated.

5 THE WITNESS: Please state your name and spell your  
6 last name for the record.

7 THE WITNESS: My name is Salvador Gonzalez. Last  
8 name is G-o-n-z-a-l-e-z.

9 THE COURT: Please proceed.

10 **SALVADOR GONZALEZ,**  
11 **called by and on behalf of Defendant, testified as follows:**

12 **DIRECT EXAMINATION**

13 BY MR. SAROSY:

14 Q. Good afternoon, Mr. Gonzalez. Thank you for being here.  
15 Can you please tell me what your educational background  
16 is?

17 A. Yes. My education, I have a Bachelor's of Arts in ethic  
18 studies, a Bachelor of Science in criminal justice from  
19 California State University, Sacramento.

20 Q. And where are you currently employed?

21 A. I am currently employed with the Department of Justice.

22 Q. And how long have you been employed at the Department of  
23 Justice?

24 A. I am going on my ninth year.

25 Q. And are you at a specific bureau within the Department of

1 Justice?

2 A. Yes.

3 Q. And what is that bureau called?

4 A. The Bureau of Firearms.

5 Q. And what roles have you -- or how long have you been with  
6 the Bureau of Firearms, specifically?

7 A. I have been with the Bureau of Firearms eight years now.

8 Q. And what roles have you had at the Bureau of Firearms?

9 A. I've been a Special Agent with the Bureau of Firearms  
10 where we -- through the firearm familiarization, also  
11 enforcement firearms, enforcement regarding either noncompliant  
12 firearms or prohibited people.

13 Q. And what is your current role at the Bureau of Firearms?

14 A. My current role within the last -- what is it? -- four  
15 years, going on four years now, I do classes in regards to  
16 firearms familiarization, also contact, you know, prohibited  
17 people. I also do -- I also have duties that include -- I'm  
18 over the roster of firearms.

19 Q. And --

20 A. California handgun roster.

21 Q. And what is your current title?

22 A. Special Agent Supervisor.

23 Q. And are you based in Sacramento?

24 A. Yes.

25 Q. And do you cover certain areas, or are you just restricted

1 to Sacramento?

2 A. I pretty much cover anywhere from Kern County up to the  
3 Oregon border.

4 Q. And as a Special Agent Supervisor, do you have additional  
5 duties that other Special Agent Supervisors in the Bureau of  
6 Firearms do not have?

7 A. Yes.

8 Q. And what are some examples of those duties?

9 A. I do expert reports for district attorneys, local  
10 agencies. I go over facts regarding firearms, do some  
11 familiarization courses for peace officers, property  
12 technicians, other agents, other law enforcement. I've  
13 conducted training with local DA's and ATF in regards to  
14 privately-made firearms, assault weapons, and other types of  
15 firearm familiarization courses.

16 Q. And do you -- other special agents and other staff in the  
17 Bureau of Firearms, do they come to you for expertise as on  
18 firearms and whether something is classified as an assault  
19 weapon or a machine gun?

20 A. Correct.

21 Q. Do other law enforcement agencies also come to you for  
22 your expertise on firearms?

23 A. Correct.

24 Q. Would you consider yourself a firearms expert for the  
25 Bureau of Firearms?

1 A. Yes.

2 Q. And I forgot to bring you an exhibit binder, so just give  
3 me one second.

4 Your Honor, may I?

5 THE COURT: You may.

6 BY MR. SAROSY:

7 Q. We'll get to your CV in a second, or we'll show it in a  
8 second. But your CV, I think, mentions that you've made or  
9 assisted in the arrest of over 100 people for illegal weapons  
10 possession and participated in over 30 search warrants.

11 Can you estimate how many firearms you've handled during  
12 those investigations?

13 A. Hundreds, over 500 or more. I mean, it depends. Some  
14 cases that you deal with 100 firearms per case, so it's over,  
15 probably, a thousand.

16 Q. So you are saying, in one search, you could come across  
17 100 firearms?

18 A. Yes, correct.

19 Q. And I'm assuming that number would include long guns and  
20 handguns?

21 A. Correct.

22 Q. And you mentioned that you oversee the handgun roster.  
23 And as you know, the handgun roster is what is required under  
24 the Unsafe Handgun Act.

25 Does that sound right to you?

1 A. Yes.

2 Q. And what are your responsibilities in overseeing the  
3 handgun roster?

4 A. Well, when we receive applications from the certified lab  
5 indicating that a manufacturer wants to introduce a pistol to  
6 the roster, I take a look at the firearm and compare it. If  
7 it's a certain firearm that we just received, they call it,  
8 like, a tested firearm, which we just received it, I take a  
9 look and make sure we follow requirements.

10 Initially, it'll come, and the compliance report will  
11 state and be checked off if it's gone through the drop-safety  
12 test; has a positive manual of safety or some type of safety,  
13 if it is a revolver; if it has gone, like I said, through 600  
14 rounds of firing; if it has a chamber load indicator or  
15 magazine disconnect or -- at this time, I guess, there are no  
16 microstamping -- firearms with microstamping. But we just go  
17 over all those requirements, if they've been met.

18 If it's similar, of course, if it's similar findings  
19 except for -- depending on when the firearm was introduced, if  
20 it was introduced prior to the microstamping or -- not the  
21 microstamping but the chamber load indicator or magazine  
22 disconnect, then we just verify that the new similar matches  
23 that tested firearm and make sure that all the parts are  
24 identical to the originally submitted firearm.

25 So then after that, we get the application plus the fee,



1 which is a \$200 fee, to get the firearm listed. We then have  
2 what's called -- we determine if the firearm meets all the  
3 requirements and if it's approved or not.

4 Q. And in your role in overseeing the handgun roster, how  
5 many handguns do you think you've handled in doing those  
6 responsibilities?

7 A. Hundreds.

8 Q. Do you know how to -- sorry.

9 That number, does that number include -- or what are the  
10 types of handguns, I guess, that that would include?

11 A. There is a single-action revolver, double-action  
12 revolvers, semi-automatic pistols, semi-automatic pistols with  
13 chamber load indicators, semi-automatic pistols with chamber  
14 load indicators and magazine disconnects, single shot firearms  
15 or handguns. I think that's about it.

16 Q. Do you know how to disassemble all of those different  
17 types of firearms and handguns?

18 A. Yeah. Well, I've had to learn legally, yes.

19 Q. So you can identify the parts within all those types of  
20 handguns?

21 A. A lot of the parts.

22 Q. And have you disassembled semi-automatic pistols with a  
23 chamber load indicator and a magazine disconnect?

24 A. Yes.

25 Q. And have you fired semi-automatic pistols with a chamber

1 load indicator and a magazine disconnect?

2 A. Yes.

3 Q. And are you familiar with how -- you don't need to  
4 describe yet how a chamber load indicator works, but are you  
5 familiar with how a chamber load indicator works?

6 A. Yes.

7 Q. Are you familiar with how a magazine disconnect works?

8 A. Yes.

9 Q. And are you familiar with how microstamping is intended to  
10 work under California law?

11 A. Yes.

12 Q. And if you can turn to Exhibit 1, which is just tab  
13 number 1. Is this an accurate and up-to-date copy of your CV?

14 A. Yes, it is.

15 MR. SAROSY: Your Honor, I would like to move Exhibit  
16 1 into evidence.

17 THE COURT: Any objection?

18 MR. DALE: No objection.

19 THE COURT: Exhibit 1 will be received into evidence.  
20 (Exhibit 1 was received into evidence.)

21 MR. SAROSY: Thank you.

22 Q. And does your CV list all of the firearms-related  
23 trainings that you have attended?

24 A. Yes.

25 Q. I am not going to have you go through all of them but just

1 for our benefit, can you just highlight some of the trainings  
2 relating to the identification and use of firearms?

3 A. I've gone to Colt Armory School provided through Colt.  
4 I've gone to the Glock Armory School provided through Glock;  
5 also, the Benelli. Benelli was provided through another -- not  
6 the actual manufacturer, but it a Benelli shotgun armory  
7 course. I also had submachine gun classes, where we took apart  
8 our firearms just to familiarize ourselves with what we use.

9 I've also been a Range Master, which is the AR-15-type  
10 rifles in order to train and shoot and train other people.

11 Q. And what trainings did you have to do to become a Special  
12 Agent at the Bureau of Firearms? Firearms -- I'm sorry.

13 what firearms training have you had to do to become a  
14 Special Agent?

15 A. Well, I had -- I would have to go through firearms  
16 familiarization courses in the past. I've had to go through,  
17 of course, POST -- I had POST through Golden West Academy here  
18 in Huntington Beach, also had numerous trainings with our old  
19 expert which he conducted certain trainings that I went  
20 through. I went through the private manufactured firearms  
21 training with ATF as well. I think that is a lot of what I  
22 remember right now.

23 Q. When say, "Our old expert," who are you referring to?

24 A. Blake Graham.

25 Q. And what was his role at the Bureau of Firearms?

1 A. He was an expert. His last role was deputy district --  
2 not district. He was Assistant Director for the Bureau of  
3 Firearms. But he also started as a Special Agent, moved to be  
4 an expert over the roster himself.

5 Q. And he was the Bureau's firearms expert before you?

6 A. Correct.

7 Q. And can you estimate how many hours of firearms training  
8 you've gone through to date?

9 A. Probably hundreds. I don't know exactly. I never really  
10 counted.

11 Q. Would you say over a thousand?

12 A. I would say so.

13 Q. And have you given testimony in court before relating to  
14 firearms identification?

15 A. Yes.

16 Q. Were those criminal or civil cases?

17 A. Criminal.

18 Q. And that would be criminal prosecutions --

19 A. Correct.

20 Q. -- by district attorneys?

21 So do you consider your areas of expertise here to be to  
22 include firearms identification?

23 A. Yes.

24 Q. Do you consider yourself an expert in the handgun roster?

25 A. Yes.

1 Q. And do you consider yourself an expert in the requirements  
2 of the handgun roster?

3 A. Yes.

4 MR. SAROSY: All right. Your Honor, I would like to  
5 offer Special Agent Supervisor Sal Gonzalez as an expert in the  
6 areas he just described.

7 THE COURT: He will be so designated.

8 MR. SAROSY: Thank you.

9 Q. We are going to start with talking about how the handgun  
10 roster -- what it is and how it works, and then we'll move on  
11 to the specific requirements of the roster.

12 And, obviously, Your Honor, if you have follow-up  
13 questions, feel free.

14 Can you briefly explain -- I know we've heard testimony  
15 about what the handgun roster is, but can you explain, from  
16 your perspective, what the handgun roster is?

17 A. Well, back in -- what was it? -- 1968, the Gun Control Act  
18 passed which put kind of a hold on foreign importation of  
19 truly-made firearms. So because of that, there was, like, five  
20 distributors out of the Los Angeles area that started making  
21 these what they call, "Saturday Night Specials," which is kind  
22 of termed "the ring of fire," right, because they were located  
23 in kind of a circular area in L.A., the Los Angeles area.

24 So because of that, the roster was started where they  
25 tried to get certain safety devices, safety -- bring firearms

1 up to compliance and make sure that firearms weren't  
2 discharging without, you know, the barrel blowing up or the  
3 firearm blowing up in a user's hand.

4 Q. So were those some of the safety issues with the "Saturday  
5 Night Specials"?

6 A. Correct.

7 Q. Were there other safety issues that you're aware of with  
8 handguns described as "Saturday Night Specials"?

9 A. Not that I recall.

10 Q. And, generally, can a California resident purchase a  
11 handgun that is not listed on the roster?

12 A. A California resident? No.

13 Q. And can a California resident possess a handgun that is  
14 off-roster?

15 A. Yes.

16 Q. And is there -- is the roster publicly available, a copy  
17 of the handgun roster?

18 A. Yes, it's publicly available online.

19 Q. And is the publicly available list, is that a searchable  
20 list, or is it like an Excel spreadsheet?

21 A. It's a searchable list.

22 Q. Can you turn to Exhibit 2, or tab 2.

23 Is that an accurate screenshot of the searchable boxes  
24 on -- for the handgun roster?

25 A. Yes.

1 Q. And is this a screenshot of -- I guess, what is this a  
2 screenshot of? Like, which website?

3 A. It's Office of Attorney General's Handguns Certified for  
4 Sale. It's the roster, what we term the "roster."

5 Q. And it seems like there -- do you see two searchable boxes  
6 here?

7 A. Yes.

8 Q. And can you describe how -- do you know how those work,  
9 the searchable boxes?

10 A. Yes. So the first one where it states -- it just says,  
11 "Manufacturer," it's kind of a drop-down menu that lists all  
12 the manufacturers in alphabetical order.

13 In the search, you can search by manufacturer and model,  
14 Just type it in, and it will pull up the type of manufacturer  
15 or firearm that you are looking for.

16 MR. SAROSY: All right. Your Honor, I would like to  
17 move Exhibit 2 into evidence.

18 THE COURT: Any objection?

19 MR. DALE: No objection.

20 THE COURT: Exhibit 2 will be received into evidence.

21 (Exhibit 2 was received into evidence.)

22 BY MR. SAROSY:

23 Q. And what are the types of handguns that are on the roster?

24 A. Handguns, like I said before. There are revolvers, some  
25 semi-automatic pistols. We have some single shots. We have

1 semi-automatics with chamber load indicators, semi-automatic  
2 with chamber load indicators and magazine disconnect. That's  
3 all we have there on the roster.

4 Q. And does the Bureau of Firearms keep a sample of every  
5 handgun that has been added to the roster?

6 A. We keep one sample, yes.

7 Q. And for this case, did you take some photographs of some  
8 of those samples --

9 A. Yes.

10 Q. -- that were maintained by the Bureau of Firearms?

11 If you can turn to Exhibit 3, is this an accurate picture  
12 of a revolver that is currently on the roster?

13 A. Yes.

14 Q. What is the model name for this revolver?

15 A. This is the North American Arms, what they call -- it  
16 would be NAA-22MS.

17 Q. And can you describe what a revolver is and how it  
18 operates? Can you describe what a revolver is and how it  
19 fires?

20 A. So in this one, it's a single shot revolver, so you would  
21 have to set the hammer back and then pull the trigger in order  
22 for it to discharge a round.

23 Q. I am just going to show you Exhibit 3, real quick. This  
24 is very bright, but can you see that?

25 A. Yes.



1 Q. Can you just circle on the screen where the hammer is,  
2 that you were describing?

3 A. Here (indicating). This little thing here.

4 Q. And is this a single-action revolver or a double-action?

5 A. It's a single-action.

6 Q. What is the difference between a single-action and a  
7 double-action revolver?

8 A. Well, with the single-action, like I said, you would have  
9 to pull the hammer back before you could fire the trigger or  
10 put your finger on the trigger before it fired.

11 The double-action, it would happen automatically depending  
12 on the type; right? But the double-action, once you put your  
13 finger on the trigger and pull it, it will fire on the first  
14 round. After the second round, it can either go to  
15 single-action, where it will fire after the hammer is already  
16 cocked back. So there is differences, little differences.

17 MR. SAROSY: I will take this off.

18 Your Honor, can I move Exhibit 3 into evidence, please?

19 THE COURT: Any objection?

20 MR. BRADY: Is that exhibit going to reflect the mark  
21 that the witness just made on it?

22 MR. SAROSY: I don't believe so, no.

23 MR. DALE: That's fine. No objection.

24 THE COURT: Exhibit 3 will be received into evidence.  
25 (Exhibit 3 was received into evidence.)

1 BY MR. SAROSY:

2 Q. And, Mr. Gonzalez, the circle you made, was that of the  
3 trigger or the hammer?

4 A. I made the trigger; right?

5 Q. No. Sorry. I was asking about the hammer.

6 A. Oh sorry.

7 Q. No. I'm sorry.

8 A. I'm sorry.

9 Q. Yeah, no worries.

10 Can we do it again? Can you circle where the hammer is?

11 A. For some reason I thought "trigger." But, yeah, here is  
12 the trigger.

13 Q. Is that --

14 A. Here is the hammer. Here is the trigger.

15 Q. So you would have to -- for a single-action revolver using  
16 what you're describing right now, can you describe again what  
17 you would have to do?

18 A. So for a single-action, you would have to cock the hammer  
19 back, and then you pull the trigger. And that's the only way  
20 to discharge the firearm in this sense.

21 Q. So you have to pull the hammer back every time?

22 A. Yes.

23 Q. Okay.

24 A. Like you see in the cowboy movies where they use one hand  
25 to try to manipulate it to fire faster.

1 Q. Can you turn to Exhibit 4? Is that an accurate picture of  
2 a revolver on the roster?

3 A. Yes.

4 Q. And what is the model name for that revolver?

5 A. This is a KSP-321X.

6 Q. And who is the manufacturer?

7 A. It's a Sturm, Ruger.

8 Q. I am going to show you Exhibit 4.

9 Is this a single-action or a double-action revolver?

10 A. This is what we call "double-action."

11 Q. And can a double-action revolver typically be fired faster  
12 than a single-action revolver?

13 A. Yes.

14 Q. And how many cartridges or bullets does a revolver  
15 typically hold?

16 A. Well, it all depends. Some can go five to six, depending  
17 on the type of revolver it is.

18 Q. And how does the shooter reload a revolver?

19 A. You have to open up the cylinder, pull up the pin up out  
20 of the cylinder, and load it manually.

21 Q. Can you circle where the cylinder is just for everyone's  
22 benefit?

23 A. (Witness complies.).

24 Q. Thank you.

25 Your Honor, I would like to move Exhibit 4 into evidence.

1 THE COURT: Any objection?

2 MR. DALE: No objection.

3 THE COURT: Exhibit 4 will be received into evidence.

4 (Exhibit 4 was received into evidence.)

5 BY MR. SAROSY:

6 Q. All right. Let's talk about semi-automatic pistols.

7 Can you turn to tab 5.

8 Is this an accurate picture of a semi-automatic pistol  
9 that is currently on the roster?

10 A. Yes, it is.

11 Q. And what is the manufacturer and model for this  
12 semi-automatic pistol?

13 A. The manufacturer is Kahr Arms, model M9098A;

14 Q. And does this semi-automatic pistol have a chamber load  
15 indicator or magazine disconnect?

16 A. This one does not.

17 Q. And can you describe what a semi-automatic pistol is and  
18 how it operates compared to a revolver?

19 A. Well, a semi-automatic pistol will have a magazine  
20 inserted into the magazine well. Once you load it, pull the  
21 slide back, load the chamber, a round, by pulling the trigger,  
22 it automatically will feed another round while the other one  
23 extracts -- well, the cartridge extracts, and the bullet goes  
24 out.

25 MR. SAROSY: Okay. Your Honor, can I move Exhibit 5

1 into evidence?

2 THE COURT: Any objection?

3 MR. DALE: No objection.

4 THE COURT: Exhibit 5 will be received into evidence.

5 (Exhibit 5 was received into evidence.)

6 BY MR. SAROSY:

7 Q. Can you explain how semi-automatic pistols without a  
8 chamber load indicator and magazine disconnect are still on the  
9 roster after the law required chamber load indicators and  
10 magazine disconnects and microstamping?

11 A. Yes. Well, these firearms were introduced prior to --  
12 what was it? -- 2006 before the chamber load indicator was  
13 required. It was a requirement before the magazine disconnect  
14 in 2007 was required.

15 So if they keep these on the roster, if they do the fee,  
16 which is an annual fee or maintenance fee for \$200, and they  
17 keep on renewing it, they remain on the roster.

18 Q. And can you turn to Exhibit 6, or tab 6. And this is an  
19 accurate picture of a semi-automatic pistol that is currently  
20 on the roster?

21 A. Yes.

22 Q. And what is the manufacturer and model name for this  
23 firearm?

24 A. This is Smith & Wesson M&P 9 Shield.

25 Q. And does this pistol have a chamber load indicator and a

1 magazine disconnect?

2 A. This one does.

3 Q. I am going to show you Exhibit 6, and we'll talk more  
4 specifically about chamber load indicators and magazine  
5 disconnects.

6 But can you just circle, using your screen, the general  
7 area where the chamber load indicator and the magazine  
8 disconnect would be?

9 A. Well, on a Smith & Wesson, on this model, it be on here.  
10 It's kind of flush, so you won't see it. It's here on the  
11 slide, chamber load indicator.

12 Q. And then the magazine disconnect?

13 A. The magazine disconnect, it's internal, so it's inside the  
14 magazine well. It's somewhere in here. It's inside the  
15 magazine, so you can't see it with this picture.

16 MR. SAROSY: All right. Your Honor, can I move  
17 Exhibit 6 into evidence?

18 THE COURT: Any objection?

19 MR. DALE: No objection.

20 THE COURT: Exhibit 6 will be received into evidence.

21 (Exhibit 6 was received into evidence.)

22 BY MR. SAROSY:

23 Q. Can you turn to tab 7, Mr. Gonzalez? Do the photos in  
24 front of you -- I guess, what do they show?

25 A. This was a chamber load indicator on the Smith & Wesson.

1 Q. Is this a close-up of the chamber load indicator from the  
2 same Smith & Wesson M&P 9 Shield that we were just looking at?

3 A. Yes.

4 Q. And can you briefly describe what a chamber load indicator  
5 is?

6 A. A chamber load indicator is supposed to let the user know,  
7 or somebody that comes in contact with the firearm, that there  
8 is a round chambered in the barrel.

9 Q. Actually, I'll hold off for now.

10 Can we move Exhibit 7 into evidence, Your Honor.

11 THE COURT: Any objection?

12 MR. DALE: No objection.

13 THE COURT: Exhibit 7 will be received into evidence.

14 (Exhibit 7 was received into evidence.)

15 MR. SAROSY: Thank you.

16 Q. Can you turn to tab 8, Mr. Gonzalez?

17 A. (Witness complies.).

18 Q. And what is this a picture of?

19 A. This is, like, the same, a firearm, Smith & Wesson M&P 9.  
20 It shows -- well, one thing when the chamber load indicator is  
21 down. It also shows the magazine disconnect mechanism. If you  
22 look at toward the center, you see a little silver blade or tab  
23 towards the center, and that's the magazine disconnect.

24 Q. And what is the -- we'll get more into magazine  
25 disconnects mechanisms in a second. But what is the function

1 of the magazine disconnect?

2 A. So when the magazine disconnect -- when the magazine is  
3 out of the weapon, it won't allow a round to be fired, even  
4 there's a live round in the chamber.

5 Q. And, currently, in order for a new handgun, not a similar  
6 handgun, in order for a new handgun to be added to the  
7 roster -- sorry -- a semi-automatic pistol to be added to the  
8 roster, would it need to have a chamber load indicator and a  
9 magazine disconnect mechanism?

10 A. Correct.

11 Q. Do revolvers need to have a chamber load indicator or  
12 magazine disconnect mechanism to be added to the roster?

13 A. No, they do not.

14 Q. Can you turn to tab 9?

15 A. (Witness complies.)

16 Q. What is this a picture of or photograph of?

17 A. This is a Franklin Armory CA320. It's a single shot  
18 pistol.

19 Q. And is this an accurate picture of that single shot  
20 pistol?

21 A. Correct.

22 Q. And is this pistol on the handgun roster currently?

23 A. Yes, it is.

24 Q. And can you describe what a single shot pistol is?

25 A. A single shot pistol technically needs to be manually



1 loaded every time you let off a round. So you shoot one round,  
2 the slide remains open load, and you load another round and  
3 then go ahead and shoot. It has to be manually loaded every  
4 single time.

5 Q. The manual reload, is that the main difference between a  
6 semi-automatic pistol and a single shot pistol?

7 A. Correct.

8 Q. When you fire a semi-automatic pistol, how does a  
9 semi-automatic pistol typically reload?

10 A. Well, essentially, you fire from a semi-automatic pistol,  
11 but like I said, you have to have -- you have a magazine inside  
12 the pistol. It would -- the magazine would cause the next  
13 round to go up into the chamber and fire. It lets you fire  
14 again while the other cartridge ejects.

15 Q. So with the pull and then the release of the trigger, does  
16 it fire and then reload in that one action?

17 A. So when you pull the trigger, it will fire. The slide  
18 goes back. Then, it causes it to extract, the cartridge to  
19 extract. Another round will go up, slide up and reload the  
20 firearm.

21 Q. And are there single shot pistols on the roster that do  
22 not require a manual reload of ammo?

23 A. Single shot pistols? Let me think.

24 Q. I guess -- let me strike that.

25 when you a "manual reload," what is an example of a manual

1 reload?

2 A. Manually, you would get it with your hands and pick it up.  
3 The slide would be open. You lay it on the inside of the --  
4 where the extractor is at; right? You lay it in there, and let  
5 the rack -- the slide go forward, and then you would go ahead  
6 and pull the trigger, and the round would go off.

7 Q. And do single shot pistols need to have a chamber load  
8 indicator or magazine disconnect?

9 A. No, they do not.

10 MR. SAROSY: Okay. Your Honor, can I move Exhibit 9  
11 into evidence?

12 THE COURT: Any objection?

13 MR. DALE: No objection.

14 THE COURT: Exhibit 9 will be received into evidence.  
15 (Exhibit 9 was received into evidence.)

16 BY MR. SAROSY:

17 Q. Let's talk about how many handguns are currently on the  
18 roster. Do you know how many total handguns are currently on  
19 the roster, approximately?

20 A. As of January 1st, there's 829 on the roster.

21 Q. And of those 829, do you know about how many revolvers?

22 A. Approximately, like, 314.

23 Q. And about how many single shot pistols are on the roster?

24 A. Single shot pistols, there is 60.

25 Q. And about how many semi-automatic pistols are currently on

1 the roster?

2 A. There is 499.

3 Q. And of those 499, how many of those are similar or similar  
4 to semi-automatic pistols?

5 A. Similar to 499? I am trying to remember. It's about 300,  
6 approximately 300. I cannot recall.

7 Q. Are similars, or are new?

8 A. I cannot recall. I cannot tell you. I cannot recall.

9 Q. And about how many total semi-automatic pistols are on the  
10 roster with the chamber load indicator and a magazine  
11 disconnect?

12 A. There is 32.

13 Q. And are there any semi-automatic pistols on the roster  
14 with microstamping?

15 A. No, there are not.

16 Q. And in the past five years, so, I guess, since about 2018,  
17 has the number of handguns on the roster gone below 800?

18 A. In the past five years, no.

19 Q. And are you aware of the law that would require any time a  
20 new handgun -- a new semi-automatic pistol is added to the  
21 roster that three must be removed from the roster?

22 A. Yes. If a new handgun was added, I believe, with  
23 microstamping, then one handgun model would be removed.  
24 Correct? Is that way you phrased it?

25 Q. All right. Is it three that would be need to be removed

1 or one?

2 A. It was -- actually, yeah, it's three. Three that would be  
3 removed, but it was of the similar, I believe, model. Or it  
4 goes by expiration dates.

5 Q. And have any handguns to date been removed from the roster  
6 because of that provision?

7 A. No.

8 Q. And I think you talked about this generally in the  
9 beginning but -- actually, I'll skip it, because you actually  
10 talked about the process for getting a handgun added to the  
11 roster.

12 And that -- the process you described for getting a  
13 handgun added to the roster, that was for a new handgun?

14 A. Correct.

15 Q. Was that for a new handgun?

16 A. Correct. I could reemphasize or restate how similar it  
17 would be added.

18 Q. Actually, can you walk us through the process again, just  
19 generally how, starting from the lab?

20 A. Yeah. So, like I said, the manufacturer would send three  
21 samples to the lab. The lab would then make sure it would meet  
22 certain requirements such as it would have to have -- if it's  
23 semi-automatic, it would have to have positive safety, which is  
24 something that could be a trigger, a trigger blade, a manual  
25 thumb safety, a firing pin block. They check that off seeing

1 it does have one.

2 And then it would have to have -- pass certain  
3 drop-testing, which is six tests in all. They have some kind  
4 of little -- like a rate that they have that they would -- when  
5 they place the firearms to fall in certain directions and  
6 there's discharges.

7 It would have to go through 600 rounds of firing. If it  
8 fails within the first 20 rounds, then they consider it  
9 failing. Or if it fails between anywhere -- in more than the  
10 six rounds or six malfunctions within those 600, then it fails  
11 as well.

12 But if they all pass, it passes all of these tests, then  
13 one of the firearms that are part of the samples gets sent back  
14 to the Department of Justice along with certified lab test  
15 report and a check for \$200.

16 Q. And what is generally the process for a similar handgun to  
17 be added to the roster?

18 A. Similar handguns, basically the same thing. The same  
19 amount is charged, \$200. The only difference is, when it's  
20 tested, there is a sample we could refer back to which we have  
21 in our vault in Sacramento. So we take a similar, look at the  
22 tested model, make sure that there had been no physical mark  
23 and internal changes. If we notice that there has been some  
24 type of internal change with some type of mechanism, some type  
25 of part, then we basically -- I'll review it and then decide if

1 it's going to pass or not. If it's an external change,  
2 something cosmetic, we also go through the same process,  
3 depending on what the change is. We decide if it's going to  
4 pass or not.

5 When it's more of a physical change, then it's more likely  
6 that it won't pass because we don't know, because of that  
7 physical change, if a drop test or something else would cause  
8 it to misfire, so that would -- a physical change would require  
9 to go get it retested.

10 Q. A similar handgun is not sent to a lab; right?

11 A. Correct.

12 Q. And when you talk about cosmetic differences, what are  
13 examples of cosmetic differences?

14 A. They'll change, like, stripling on the grip. They'll say  
15 that they put, maybe, like a rail or something on the frame.  
16 They make some type of -- they change their font. Little  
17 changes that, if they notify us, they tell us, "Hey, we did  
18 this type of change on the external side that is not going to  
19 the impact the workings, internal workings, of the firearm,"  
20 then that is when it gets reviewed. And that is when a  
21 decision is made if it's going to go through or not.

22 Q. And when a manufacturer sends a firearm to be added that  
23 is similar, do they sign a statement under oath stating that  
24 the only differences are cosmetic differences?

25 A. Correct. They'll send us something. If there are

1 changes, they'll let us know ahead of time, these are the  
2 changes, external changes. And if we have further questions,  
3 we talk back to them and ask them, "Does this in any way affect  
4 the workings of the firearm?"

5 They'll give us a brief explanation, if we need more. And  
6 then we make our decision based on the explanation.

7 Q. And can you look at tab 10, please? And can you describe  
8 what that is photograph of?

9 A. Yes. This is Smith & Wesson M&P Shield. It's the Robin's  
10 Egg Blue, like Tiffany Blue.

11 Q. Is this an accurate photo of a handgun that's on the  
12 roster?

13 A. Correct.

14 Q. And is this a similar handgun?

15 A. Yes.

16 Q. And what is it a similar handgun of?

17 A. Of the one we saw prior, the black M&P Shield.

18 Q. Would that be Exhibit 6?

19 A. I believe -- yes.

20 MR. SAROSY: Your Honor, can I move Exhibit 10 into  
21 evidence.

22 THE COURT: Any objection?

23 MR. DALE: No objection.

24 THE COURT: Exhibit 10 will be received into  
25 evidence.

1 (Exhibit 10 was received into evidence.)

2 BY MR. SAROSY:

3 Q. And you were talking earlier about firing tests that a lab  
4 does.

5 Can you describe what -- you know, what labs conduct these  
6 tests?

7 A. Yeah. There is currently two labs that conduct the tests.  
8 There is one in -- was is it? -- Baltimore, Maryland area;  
9 another one, I believe, in Illinois. I haven't been to the  
10 second lab. I've only been to the first lab.

11 Like I said, you go there. They have the three samples.  
12 They run the tests. They -- based on, like I said, 600 rounds,  
13 if there is a malfunction within the first 20, then they'll  
14 fail the firearm. As long as -- they make sure that it's  
15 not -- it doesn't have anything to do with ammunition or the  
16 cartridge, so they take that into consideration. They'll  
17 change out the magazines, and they'll use different ammunition.

18 And if that is the case, they proceed to retest it and  
19 fire it again, and then they'll proceed. But if it has a total  
20 of six or more malfunctions within those 600 rounds, then they  
21 kill it, the firearm.

22 Q. What you described is that the firing test?

23 A. Correct.

24 Q. What kind of malfunction is the lab looking for during the  
25 firing test?



1 A. It's able to -- it doesn't discharge. Typically, just not  
2 discharging, not firing off a round.

3 Q. So what is the importance of making sure there is no  
4 malfunction during a firing test?

5 A. Well, if you purchase a firearm, you want to make sure it  
6 works.

7 Q. And if a firearm failed a firing test, what are some of  
8 the things that could happen to it if you continued to fire it?

9 A. Sometimes it will cause the barrel to either get damaged  
10 or either the handgun to, basically, blow up in your hand by  
11 missing the two rounds at the same time. Just different things  
12 could happen.

13 Q. And if a handgun malfunctioned during a lab test, could it  
14 also malfunction outside of a lab?

15 A. Correct.

16 Q. And what is the public safety benefit of doing the firing  
17 test?

18 A. Well, you know you have a good product that has been  
19 tested.

20 Q. And the two labs that you've described, do they have to go  
21 through any kind of certification process?

22 A. Yes.

23 Q. And can you briefly just describe what that certification  
24 process is?

25 A. Yes. So you'll have people that go out there. They go

1 over the test. They just follow through what their testing is.  
2 They make sure that the process is followed. They review the  
3 drop-testing. They'll review the firing test. And they make  
4 sure that they have all the proper documentation, the documents  
5 and everything has been gone through. They go through over the  
6 compliance test report with them as well.

7 Q. And I think you mentioned earlier about something called  
8 the drop test. And what is involved in the drop test?

9 A. Well, the drop test, they'll take what they have -- it's  
10 kind of like a little sling, which is manipulated to place the  
11 firearm in different positions. Maybe once when it faces to  
12 the rear. So they drop it with the slide facing backwards to  
13 the ground.

14 Another one where they'll drop it from the front, which is  
15 the barrel facing forward. They'll drop it from different  
16 angles. So it's different -- six different types of drops.

17 Q. What is the lab looking for when it conducts a drop test?

18 A. They want to make sure that the firearm does not cause a  
19 discharge, an accidental discharge.

20 Q. And if a handgun fired during a drop test in a lab, could  
21 it fire if it was dropped in real life as well, outside of a  
22 laboratory?

23 A. Yes.

24 Q. What do you see as the public safety benefit of the drop  
25 test?

1 A. Well, like I said, it's just to make sure that the firearm  
2 you are receiving does not accidentally discharge when there is  
3 improper handling of a firearm.

4 Q. And if a handgun -- or once a lab considers that a handgun  
5 has passed the test, what does the lab send to the Bureau of  
6 Firearms?

7 A. They send one of the samples, one of the three samples  
8 will be sent to the Department of Justice along with the test  
9 results, and then -- along with a fee of \$200.

10 Q. Are those test results reported in a certain type of form?

11 A. Yes.

12 Q. And what is that form called?

13 A. It's Compliance -- what's it called? I always forget.  
14 It's a Compliance Report. Department of Justice Compliance  
15 Report.

16 Q. Can you turn to tab 11. Is that an accurate copy of a  
17 blank Compliance Test Report?

18 A. Yes.

19 MR. SAROSY: Your Honor, I'd like to move Exhibit 11  
20 into evidence.

21 THE COURT: Any objection?

22 MR. DALE: No objection.

23 THE COURT: Exhibit 11 will be received into  
24 evidence.

25 (Exhibit 11 was received into evidence.)

1 BY MR. SAROSY:

2 Q. Let's talk about chamber load indicators more  
3 specifically. If you can turn to tab 7, which I believe are  
4 close-up photos of the chamber load indicator.

5 Now, does every handgun that has a chamber load indicator  
6 on the roster -- do they put the chamber load indicators in all  
7 the same place?

8 A. No, they do not.

9 Q. So is Exhibit 7 just one example of where a chamber load  
10 indicator could be?

11 A. Yes.

12 Q. And for this Smith & Wesson M&P 9 Shield, can you describe  
13 the location of the chamber load indicator on this handgun?

14 A. Yes. It's on the slide, on top of the slide, right behind  
15 where the extractor -- or the barrel and the slide meet.

16 Q. And are there specific requirements for what a chamber  
17 load indicator must look like?

18 A. Yes. It has to be seen from as close distance as far away  
19 as 24 inches, so a minimum of 24 inches. It has to be  
20 contrasting in color. If it has any wording, it has to say  
21 either in plain English -- you know, has to say that it's  
22 loaded or have a pictorial diagram indicating to a reasonable  
23 person that they would understand it's loaded.

24 Q. Is this the -- and I think you said already this is not  
25 the only way, then, to do a chamber load indicator?

1 A. Correct.

2 Q. I am going to show you the next page of Exhibit 7. It  
3 shows up pretty poorly on this, I think.

4 THE COURTROOM DEPUTY: Counsel, press the light.

5 MR. SAROSY: Brightness?

6 THE COURTROOM DEPUTY: No.

7 (A discussion was held off the record.)

8 BY MR. SAROSY:

9 Q. What is this a photo of?

10 A. This is a top view of the slide. It shows the chamber  
11 load indicator towards the center.

12 Q. Is this the view of a chamber load indicator from a  
13 shooter's perspective?

14 A. No. It would have to be higher, in a sense. To get that  
15 accurate line of sight, it would have to be centered, a little  
16 bit centered.

17 So lift it up higher. This is a little off.

18 Q. Okay. In your opinion, does a chamber load indicator --  
19 does this chamber load indicator disrupt the shooter's sight in  
20 any way?

21 A. Based -- you know, I know that seeing -- people state  
22 that, because of the white lettering, it kind of impedes their  
23 line of sight. It does fall -- it still does fall below the  
24 dot on -- towards the front. It does fall below. So if you  
25 had a similar position with your firearm, you would know where

1 your line of sight was.

2 So I don't think it impedes or stops you from having a  
3 good aim or correct aim. But I know there is arguments out  
4 there.

5 Q. And does the lab or does the Department of Justice  
6 determine whether a semi-automatic pistol has a chamber load  
7 indicator?

8 A. The Department of Justice suggests that it should have a  
9 chamber load indicator.

10 Q. And what is the benefit of a chamber load indicator -- I  
11 guess, what is the public safety benefits of a chamber load  
12 indicator?

13 A. Well, for anybody that is unfamiliar with a firearm, comes  
14 into contact with a firearm, they know that a round is present.  
15 Also, for people that either tend to forget that they, you  
16 know, either release the magazine from the magazine well or  
17 forgot to rack the slide, it'll let, you know, hey, there's  
18 still a round present.

19 Q. And if the owner of a handgun is trained in how to use  
20 their handgun, is that training enough to prevent an accidental  
21 discharge?

22 A. This is not meant to be -- to take over certain training.  
23 It's more to help you along, assist you. There is other ways  
24 to press check what mostly trained people will do. They'll do  
25 a press check. They'll rack -- you know, pull the slide back a

1 little bit. They'll see a little silver -- something silver  
2 shining or something. They'll know that there is a round in  
3 the chamber.

4 But this is not only to help along -- just like a camera  
5 in a vehicle; right? The rearview camera helps you. I mean,  
6 you still are required to look behind you at your blind spots.  
7 You just don't rely solely on the rearview camera.

8 Q. Is the chamber load indicator supposed to be relied upon  
9 instead of one's training, or is it a complement to one's  
10 training?

11 A. It's more of a complement.

12 Q. And if someone who is not trained in using the firearm  
13 gets ahold of the gun, what is the benefit of the chamber load  
14 indicator?

15 A. I'm sorry. What was your question?

16 Q. So if someone who is not the owner of the firearm, say a  
17 child, were to get their hands on the gun, what is the benefit  
18 of a chamber load indicator?

19 A. Well, they would be able to read, if they were capable of  
20 reading -- right? -- either by looking at what it said -- it  
21 said, "Loaded." Or if there was a pictorial -- a picture, they  
22 would be able to decipher the picture. Or even look at the  
23 color of it, even if it's a contrasting color like that. Well,  
24 here is, like, a bright orange or red and get a sense maybe  
25 that's not a good thing to do.

1 Q. Have you encountered a situation where reliance on a  
2 chamber load indicator caused an accidental discharge?

3 A. No, I have not.

4 Q. And can a chamber load indicator be useful for somebody  
5 who is using a firearm to engage in self-defense?

6 A. Yes.

7 Q. Can you explain how?

8 A. Well, if you use it during self-defense, you go, and  
9 you're basically firing your weapon -- sometimes when you are  
10 firing a weapon, you kind of lose track of how many rounds are  
11 out there. So by simply either looking or sliding your hands  
12 over the slide, you'll know, okay, there is still a round  
13 remaining. That would be one instance.

14 Q. And let's talk about magazine disconnect mechanisms. Go  
15 to -- if you can turn to tab 8, back to tab 8. You already  
16 described that the purpose of the magazine disconnect mechanism  
17 is -- can you, using Exhibit 8, kind of describe internal -- or  
18 how a magazine disconnect works in this photograph?

19 A. Yes. If you look at the top towards the center, the  
20 little -- like I said, the little blade that is sticking out.  
21 When it's down this way, that means it won't allow a round to  
22 go off. It basically connects to a little tab which impedes  
23 this little lever that stretches out from the trigger to the  
24 firing pin. It kind of blocks it off so it won't allow a round  
25 to go off if you do pull the trigger.



1           The other one is a little darker, but once you started  
2 inserting the magazine, that magazine disconnect mechanism  
3 starts lifting up towards the back of the firearm, which then  
4 allows you to fire off a round.

5 Q.   Does the third picture help? Is there anything in this  
6 third picture that --

7 A.   Yes. You can see it a little bit better. You can see it  
8 kind of lifting up. It's not fully inserted yet, but you can  
9 still see the movement. I don't know if I can show you, too.  
10 It kind of lifts up.

11 Q.   It's the insertion of the magazine that pushes up?

12 A.   Correct.

13 Q.   The magazine disconnect mechanism?

14 A.   Correct.

15 Q.   What is the benefit of a pistol having a magazine  
16 disconnect mechanism?

17 A.   Well, when you have a magazine disconnect -- and,  
18 typically, manufacturers, even Smith & Wesson, has it all over  
19 their pamphlet, the recommendation -- even with the NRA --  
20 is that you should store your firearm unloaded and in separate  
21 locations. But a lot of people that get these firearms use  
22 them for protection, and they seem to always store them loaded.

23           So if you were to unload it and have the magazine release  
24 without a magazine -- the magazine, even if you kept a round in  
25 the chamber, by having the magazine out, you wouldn't be able

1 to fire off a round. If you forgot, you know -- it's been so  
2 long that you held onto your weapon or you put it down and  
3 forgot to rack the slide or tried to do some kind of, like, dry  
4 firing, which is training, to try to train your finger to --  
5 you know how the trigger mechanism knows the weight of the  
6 trigger. And you can accidentally do an accidental discharge.

7 If you have the magazine out of the magazine well, then  
8 the magazine disconnect would help you avoid an accidental  
9 discharge.

10 Q. And is the magazine disconnect mechanism intended to be  
11 relied upon instead of one's training?

12 A. It's -- like I said, it's only a complement to somebody's  
13 training. It's not always -- you are not always going to rely  
14 on the internal mechanism. It is always the owner's  
15 responsibility to check if there is a round in the chamber.

16 Q. And if someone were to get a hand on the firearm, say, a  
17 child again, what is the benefit of a magazine disconnect  
18 mechanism?

19 A. Like I said, it would not allow them to fire off a round  
20 if they were to place their finger on the trigger.

21 Q. If the magazine was --

22 A. If the magazine was out.

23 Q. -- out of the gun?

24 A. Yes.

25 Q. Have you encountered a situation where reliance on a

1 magazine disconnect mechanism caused an accidental discharge?

2 A. No.

3 Q. And is it possible for one to -- for a semi-automatic  
4 pistol without a magazine disconnect mechanism -- is it common  
5 or -- let me rephrase that.

6 Can a shooter for a semi-automatic pistol without a  
7 magazine disconnect mechanism fire the gun while discharging  
8 the magazine and inserting a new magazine?

9 A. Yes. what we typically call kind, like, a tactical  
10 reload.

11 Q. And what would be a situation when they would do that?

12 A. well, same thing. when you're either -- well, for law  
13 enforcement, right, you're out shooting, either to train -- you  
14 are out at the range and you are training, you fire off all of  
15 your rounds. Like I said, you lose count. You drop the  
16 magazine. well, you don't drop that during the tactical  
17 reload, but what you do is you hold onto the magazine while you  
18 are replacing it with another magazine you have on yourself,  
19 put in another magazine, and you can still continue to fire,  
20 even though the magazine had been released.

21 Q. And that would happen in a situation where you fired all  
22 of the rounds in the first magazine?

23 A. well, technically, you don't have to fire all the rounds,  
24 because you sometimes lose track. Either you lose track of the  
25 rounds, and you want to make sure you still have enough to stay

1 in the fight; right? Or if your magazine happens to  
2 malfunction, there is a jam, you pull the magazine out. You  
3 want to put a fresh one in there just to make sure that the  
4 last one is not -- you know, might possibly be damaged, so you  
5 want to replace it with a good magazine.

6 Q. How many rounds are typically in a magazine versus  
7 semi-automatic pistol in California?

8 A. For California, for the roster, the firearms, there would  
9 be 10.

10 Q. And can a magazine disconnect mechanism be useful for  
11 somebody who is engaging in self-defense?

12 A. It could be useful, yes.

13 Q. Do you know of any situations where it could be useful?

14 A. Yes. I spoke to a CHP officer that indicated, a few years  
15 ago, that they were out conducting a traffic stop. He got into  
16 an altercation. The person tried to reach for his firearm. He  
17 went ahead and disconnected the firearm from the magazine well.  
18 It came out. So the suspect could not go ahead fire it and  
19 shoot the officer.

20 Q. And have you ever tried to remove a magazine disconnect  
21 mechanism from a firearm?

22 A. I have not.

23 Q. And would removing a magazine disconnect mechanism from a  
24 roster handgun -- would that be a violation of the Unsafe  
25 Handgun Act?

1 A. Technically, if you consider the manufacturer, it would be  
2 3200 -- Penal Code Violation 32000, 32,000.

3 Q. And, in your opinion, do chamber load indicators and  
4 magazine disconnects enhance public safety by preventing -- or  
5 helping to prevent accidental discharge?

6 A. Yes.

7 Q. And do you believe that firearms training alone is enough  
8 to provide the same level of benefit as a chamber load  
9 indicator and a magazine disconnect?

10 A. Do I what -- can I have that question again?

11 Q. Sure. Is firearms training alone enough to provide the  
12 same level of benefit provided by chamber load indicators and  
13 magazine disconnect mechanisms?

14 A. I would think they're the same if it was a good training  
15 that focused on, like I said, if the people stuck with, you  
16 know, keep your firearm away from your ammunition in a separate  
17 location and people follow through in that sense, training  
18 would be good enough. But also, like I said, this complements  
19 that training as well because it's an improvement in the sense  
20 that it makes guns a little safer.

21 Much like older cars are to newer cars; right? You have  
22 the accident avoidance. And you have, like, the rearview  
23 camera, so it's more of -- to help you and complement what you  
24 already know.

25 Q. And you mentioned earlier that you made or assisted in the

1 arrest of over 100 people. Of those arrests, did you come  
2 across firearms that were safely secured in those residences?

3 A. I came across a lot of firearms that weren't safely  
4 secured.

5 Q. And in those -- where those firearms were not safely  
6 secured, were there minors residing in that same residence?

7 A. Yes.

8 Q. And were those firearms easily accessible --

9 A. Yes.

10 Q. -- to anyone in that residence?

11 A. Well, yeah. We came across minors and prohibited people,  
12 mostly, who had access to these firearms.

13 Q. And are you aware of any studies regarding accidental  
14 firearm shootings?

15 A. Yes.

16 Q. Did you review those studies?

17 A. Yes.

18 Q. And did you rely on those studies in forming your expert  
19 opinion?

20 A. Yes.

21 Q. And, in general, what would you say those studies show?

22 A. It shows an increase in unintentional death and injuries  
23 as a result of having one, two, three of these safeties placed  
24 in a firearm or a handgun.

25 Q. Increase or a decrease?

1 A. Increase.

2 Q. Increase in accidental --

3 A. No. I mean, decrease. Yeah. Decrease in accidental and  
4 deaths.

5 Q. Okay. So, generally, the studies show a decrease in  
6 accidental deaths because of these safety devices?

7 A. Correct.

8 Q. Can you look at exhibit -- or tab 12.

9 And is this one of the studies you reviewed, the column,  
10 "Accidental Shootings, Many Deaths and Injuries Caused by  
11 Firearms Could be Prevented"?

12 A. Correct.

13 Q. Is this an accurate copy of the study?

14 A. Yes. It appears to be.

15 Q. And was this study part of a report given to Congress?

16 A. Yes.

17 Q. And you don't have to describe the methodology, but does  
18 the study describe how it reached its conclusions?

19 A. Yes.

20 Q. And are there any findings from this study that support  
21 your opinion that chamber load indicators enhance public  
22 safety?

23 A. Yes.

24 Q. And what would one of those findings be?

25 A. They say that -- I believe in this case it was that

1 23 percent of -- what was it? -- chamber load indicators  
2 decreased the amount of accidental shootings and deaths.

3 Q. Can I turn you to the bottom -- let's see, page 3. Where,  
4 I guess, it just says, "Page 3."

5 A. Yes.

6 MR. SAROSY: And, Your Honor, under Federal Rules of  
7 Evidence 803(18), for statements and treatises, periodicals,  
8 pamphlets, statements can be read into evidence; that the  
9 studies themselves cannot be admitted, so long as certain  
10 requirements are met. And I believe we've met those  
11 requirements.

12 THE COURT: I am looking at the rule. Why isn't it  
13 803(8)?

14 MR. SAROSY: Sorry, Your Honor. Let me take a look  
15 at that rule as well.

16 THE COURT: Take your time. The concern I am having  
17 is 803(18) usually deals with treatises.

18 MR. SAROSY: Right. I'm sorry. This one  
19 specifically could fall under 803(8) as well. Because the next  
20 two, I don't think --

21 THE COURT: They call it a report.

22 MR. SAROSY: I would be happy to move that under  
23 803(8).

24 THE COURT: All right. Any objection? 803(8)?

25 MR. DALE: No objection.



1 THE COURT: The report will be received in evidence.

2 MR. SAROSY: Thank you, Your Honor.

3 (Exhibit 12 was received into evidence.)

4 MR. SAROSY: Thank you, Your Honor.

5 Q. Mr. Gonzalez, on the bottom of page 3, can you read the  
6 last sentence of that page?

7 A. Yes. This states, "A safety device that indicates whether  
8 a firearm is loaded could have prevented another 28 percent of  
9 the deaths."

10 Q. And, sorry, can you read the next sentence?

11 A. Yeah. "Many accidental deaths caused by firearms, other  
12 than those affecting children, involve uncertainty about  
13 whether the weapon is loaded."

14 Q. And then can you go to -- actually that's fine.

15 And do you remember some of the examples that were  
16 discussed in the shooting when a death resulted from an  
17 accidental discharge?

18 A. If this one is the one where -- there was one where, I  
19 believe, a brother took a firearm that he believed was unloaded  
20 and shot his sister.

21 Is that this one?

22 Q. If that is what you recall from reading this study.

23 All right. I am going to move on to tab 13.

24 Is this one of the studies that you reviewed?

25 A. Yes, it is.

1 Q. Is it called "Unintended Shootings in a Large Metropolitan  
2 area: An Incident Based Analysis"?

3 A. Yes.

4 Q. And do you know if this study was published in a journal?

5 A. This one was published in a journal.

6 Q. And do the authors of the study have either a medical  
7 degree or a master's in public health?

8 A. These are doctors that have medical degrees.

9 Q. And does this appear to be an accurate copy of the study?

10 A. Yes.

11 Q. And does the study describe how it reached its  
12 conclusions?

13 A. Yes.

14 Q. And are there any findings from the study that support  
15 your opinion that chamber load indicators and magazine  
16 disconnects enhance public safety?

17 A. Yes.

18 Q. And do you recall what one of those findings is?

19 A. It says that approximately one third of all unintended  
20 shootings could be reduced by having magazine disconnect,  
21 chamber load indicator, or a firing pin block.

22 MR. SAROSY: And, Your Honor, I would ask to move  
23 this into evidence under Federal Rule of Evidence 803(18) and  
24 have Mr. Gonzalez read a specific statement -- or, I guess,  
25 read a specific statement into evidence, not move the study

1 itself.

2 THE COURT: Any objection to that?

3 MR. DALE: No.

4 THE COURT: You may do so.

5 BY MR. SAROSY:

6 Q. Can you turn to page 15 of the study? I think it's on the  
7 left-hand column, and it is, let's see, the bottom of page 15.  
8 And it's the paragraph that says, "We found evidence"?

9 A. Yes.

10 Q. Can you read that sentence, please?

11 A. "We found evidence that loaded chamber indicators,  
12 magazine safeties, and firing pin blocks might have prevented  
13 as many as one third of the unintended shootings in our  
14 series."

15 Q. Do you remember what set of shootings this study looked  
16 at?

17 A. This one, I believe, was Atlanta Metropolitan area.

18 Q. Can you turn to tab 14?

19 Is this another one of the studies that you reviewed?

20 A. Yes.

21 Q. And is this study called, "Unintentional and Undetermined  
22 Firearm-related Deaths: A Preventable Death Analysis for Three  
23 Safety Devices"?

24 A. Correct.

25 Q. And was this study published in a journal?

1 A. Yes.

2 Q. And are the authors of this study affiliated with a public  
3 health school or medical school?

4 A. Yes, they are public health officials.

5 Q. And does this appear to be an accurate copy of the study?

6 A. Yes.

7 Q. And does the study describe how it reached its  
8 conclusions?

9 A. Yes, yes.

10 Q. And are there any findings from the study that support  
11 your opinion --

12 A. Yes.

13 Q. -- about chamber load indicators and magazine disconnect  
14 mechanisms?

15 A. Yes.

16 Q. And what is one -- or what are those findings?

17 A. That it would be a decrease by 20 percent with a chamber  
18 load indicator of unintentional or accidental shootings and a  
19 4 percent decrease with magazine disconnects.

20 MR. SAROSY: And, Your Honor, I would like to take  
21 the same approach with this exhibit as I did with Exhibit 13.

22 THE COURT: Any objection?

23 MR. DALE: No objection.

24 THE COURT: You may do so.

25 BY MR. SAROSY:

1 Q. Mr. Gonzalez, can you read on the front page -- I think  
2 there is -- in the summary, there's the "Results" paragraph.

3 Do you see that?

4 A. Yes.

5 Q. And can you just read that first sentence, please -- or  
6 I'm sorry. Can you read the first two sentences?

7 A. "There were a total of 117 firearm-related deaths in our  
8 sample. 95, which is 81 percent, involving handguns; 43  
9 deaths, which is 37 percent, were classified as preventable by  
10 personalized guns; 23, which is 20 percent, by a loaded chamber  
11 indicator; and 5, which is 4 percent, by magazine safety."

12 Q. And in reading this study, do you believe that a magazine  
13 safety is the same as a magazine disconnect mechanism?

14 A. Yes.

15 Q. All right. Let's move to microstamping?

16 A. Yes.

17 Q. Can you describe what microstamping is?

18 A. Yes, microstamping is a process where, with California,  
19 alphanumeric or numerals are embedded, the way that California  
20 is going, from a firing pin into a cartridge.

21 Q. And I believe in the -- well, I'm going to show a  
22 demonstrative exhibit to help you explain that.

23 Do you recognize this?

24 A. Yes.

25 Q. This page or these diagrams?

1 A. Yes.

2 Q. And so, using these diagrams, can you walk us through how  
3 a microstamp would be placed on a cartridge?

4 A. So, like, a shooter would pull on the trigger, slide goes  
5 back -- well, before that, the shooter would pull on the  
6 trigger, and it would cause the firing pin to go forward. It  
7 would imprint the casing on the round, which would be either --  
8 if it's centerfire, it would imprint it on the primer itself in  
9 the center. If it's a rimfire, it would imprint towards the  
10 edge of the round or the cartridge. And then it goes off. And  
11 then it would extract the cartridge onto anywhere in the scene  
12 and then later on be collected.

13 The way California is going, what they call this is a  
14 Firearm Identification Number would be imprinted or embedded  
15 into the cartridge. The FIN, that would be our system, which  
16 is the automated firearm system, which would also have the  
17 listing of what the Firearm Identification Number and who --  
18 what firearm it would be tied to, in order to track and trace  
19 the owner of that firearm.

20 Q. And I'm going to show you another demonstrative exhibit.  
21 Do you recognize these photographs?

22 A. Yes.

23 Q. And can you describe what that they show?

24 A. The top photograph is the tip of a firing pin. It has  
25 protruding alphanumeric and numerals here, in there, and the

1 center. And the bottom is a separate type of -- where it's  
2 embedded on to the actual cartridge. It is just an exploded  
3 view of the center here.

4 Q. And is the cartridge case something that a shooter  
5 typically would pick up after shooting?

6 A. I wouldn't think so. I mean, there is not enough time if  
7 it's a crime. They're not going to stick around to pick up the  
8 cartridges.

9 Q. Is it easy to tell where your cartridges drop after  
10 firing?

11 A. Not typically, no.

12 Q. And how is a microstamp different from the firearm serial  
13 number?

14 A. For California, what -- the intention is to have kind of,  
15 like, you look at a frame of a vehicle, you know, they have a  
16 cross-reference number. So the cross-reference number would be  
17 the make, which would be part of the FIN, the Firearm  
18 Identification Number, along with a serialized number at the  
19 end.

20 So it's only, I believe, 10 to 12 numbers that are -- that  
21 are going to imprint on the firing pin, because they, I guess,  
22 estimated that's the most clear way to -- or the most amount of  
23 numbers you could do to clearly see when you put it under a  
24 microscope. It would, like I said, have a link and partial  
25 serial number in the actual Firearm Identification Number.

1 Q. So is the intent to have a database -- I guess, the intent  
2 to have a database where the Firearm Identification Numbers can  
3 be matched to the serial numbers?

4 A. Correct.

5 Q. And what is the intended purpose of placing a microstamp  
6 on a cartridge?

7 A. It would help law enforcement get quicker results, and it  
8 will go straight directly to the owner of the firearm.

9 Currently, I know the practice is to look at unintentional  
10 markings. But with unintentional markings, in order to tie it  
11 to a shooter, you have to --- you actually have to locate the  
12 actual firearm. In this case, you wouldn't have to locate the  
13 firearm because the serial number would be imprinted on that  
14 cartridge.

15 Q. And if the owner of a firearm was not involved in the  
16 shooting, in your opinion, would it be helpful in an  
17 investigation to know which firearm was involved in the  
18 shooting, even if the owner was not the shooter?

19 A. Yes, because it gives you another lead. So it kind of  
20 closes the gap in between where the location might be, where  
21 the person might be. It might give you a lead into if the  
22 firearm was lost and never reported. I could tell you, "Okay.  
23 This is the person that has been around my house that I suspect  
24 had the firearm." I mean, it can go many ways. It's just an  
25 extra tool.



1 Q. Do you know of any examples of shootings where  
2 microstamping could have helped identify a shooter sooner?

3 A. Yes. Recently, there was a Stockton shooting, a serial  
4 shooting. Stockton PD contacted me. They asked -- well, they  
5 told me that, based on the cartridges that were collected from  
6 different scenes, they knew or suspected that the same firearm  
7 was used in all of the shootings. So if microstamping -- and I  
8 know what they called the ghost gun that he used, a  
9 private-made firearm, but if there was a pin with markings or  
10 microstamping on that, it would have probably stopped more  
11 deaths from occurring, if it tied it that closer to -- if there  
12 was a more definite finding.

13 Q. Is it possible to remove a microstamp from a firing pin?

14 A. Yes.

15 Q. Is it possible to remove a firearm serial number?

16 A. Yes.

17 Q. And is it -- are there criminal penalties for removing a  
18 firearm serial number?

19 A. Yes.

20 Q. Are there criminal penalties for removing a microstamp?

21 A. Yes.

22 Q. And what would be the criminal penalty for doing so?

23 A. It's Penal Code for obliterated serial number. It follows  
24 the same -- it would follow the same code.

25 Q. Is that a felony or a misdemeanor?

1 A. That is a felony. I believe, yeah.

2 Q. And, in your opinion, can microstamping enhance public  
3 safety by helping law enforcement?

4 A. Microstamping, yes.

5 Q. Plaintiffs had talked about left-handed shooters being  
6 disadvantaged by the handguns on the roster.

7 Do you, yourself, shoot left-handed?

8 A. No, I do not.

9 Q. Have you spoken with people who do shoot left-handed?

10 A. Yes.

11 Q. And from your experience, are handguns typically designed  
12 for right-handed shooters or left-handed shooters?

13 A. Typically, like anything else, unfortunately, it's  
14 right-handed.

15 Q. Does that include handguns?

16 A. Correct.

17 Q. Does that also include long guns such as rifles and  
18 shotguns?

19 A. Correct.

20 Q. And from your understanding, how do left-handed shooters  
21 handle the practice of firearms typically being designed for  
22 right-handed shooters?

23 A. They have to train for the manipulation of either the  
24 slide stop, the magazine release in order to -- or the safety  
25 in order to get it to work the way they want it to. So it's

1 based on training and manipulation of the firearm.

2 Q. So do you think that left-handed shooters can use handguns  
3 on the roster to defend themselves that are designed for  
4 right-handed shooters?

5 A. Yes.

6 Q. And are there semi-automatic pistols on the roster that  
7 actually can be adapted for left-handed shooters?

8 A. Yes.

9 Q. And what are some of the ways that they can be adapted for  
10 left-handed shooters?

11 A. There are some that come with an ambidextrous safety.  
12 There are some that come with a magazine release which can be  
13 switched from one side to the other or already come with that  
14 magazine release on both sides.

15 Q. And from your conversations from -- with left-handed  
16 shooters, which ambidextrous feature do they view as most  
17 important, the safety or the mag. release?

18 A. The magazine release, typically, because that, in a sense,  
19 will bother or kind of hurt their finger where the index finger  
20 connects to your palm. It kind of rubs up on it. It's a  
21 little nuisance, in a sense.

22 Plus for reloading, it would be faster if you would have  
23 it on the opposite end.

24 Q. And are there semi-automatic pistols on the roster that  
25 have that ambidextrous magazine release?

1 A. Yes.

2 Q. Can you turn to tab -- we'll look through tab 16 through  
3 19. Can you -- for tab 16, 17, 18, and 19, can you tell us the  
4 manufacturer and the model for each of those?

5 A. Yes. So the first one is a Heckler & Koch or H&K P2000  
6 SK-V3. And the magazine release, it's right to the rear of the  
7 trigger guard.

8 Q. Let me put it up for you. Can draw it on there, please?

9 A. You can see it here or here.

10 Q. And then, Exhibit 17, can you tell us what the make and  
11 model of that is?

12 A. So the 17, it's a Springfield Armory, model XD9162. And  
13 the magazine disconnect --

14 Q. With a mag. release?

15 A. I'm sorry. Mag. Release is here.

16 Q. Okay. Just for the sake of time, can you just tell us the  
17 make and model of the -- of Exhibits 18 and 19.

18 A. Model, it's a make: Sig Sauer, model P229. And the next  
19 one is a Fabrique Nationale, FN five-seven.

20 Q. Now, do all four of these semi-automatic pistols have  
21 ambidextrous mag -- magazine releases?

22 A. Yes.

23 MR. SAROSY: Your Honor, I would like to --

24 THE WITNESS: For capability of reversing them.

25 MR. SAROSY: Your Honor, I would like to move

1 Exhibits 16, 17, 18, and 19 into evidence.

2 THE COURT: Any objection?

3 MR. DALE: No objection.

4 THE COURT: Those exhibits will be received into  
5 evidence.

6 (Exhibits 16, 17, 18, and 19 were received into evidence.)

7 BY MR. SAROSY:

8 Q. And are there semi-automatic pistols on the roster with  
9 ambidextrous external safety?

10 A. Yes.

11 A. Can you turn to tab 15? Is this an example of a  
12 semi-automatic pistol with an ambidextrous safety, external  
13 safety?

14 A. Yes.

15 Q. Can you point us to where on this firearm there is an  
16 ambidextrous external safety?

17 A. Here (indicating), the little lever there on the top.

18 Q. And what is the make and model this?

19 A. This is a Wilson Combat Tactical Elite.

20 MR. SAROSY: Okay. Your Honor, I would like to move  
21 Exhibit 15 into evidence.

22 THE COURT: Any objection?

23 MR. DALE: No objection.

24 THE COURT: Exhibit 15 will be received into  
25 evidence.

1 (Exhibit 15 was received into evidence.)

2 BY MR. SAROSY:

3 Q. And are there semi-automatic pistols on the roster that  
4 have an internal safety?

5 A. Yes.

6 Q. If there is an internal safety, does that impact a  
7 left-handed shooter in any way?

8 A. No, it does not.

9 Q. And do you believe that handguns that are currently on the  
10 roster disadvantage left-handed shooters?

11 A. Do I believe? well, they don't have as much selection as  
12 right-handed shooters, and that is an impact.

13 Q. And do you know when ambidextrous safeties and magazine  
14 releases started to be added to handguns?

15 A. I do not.

16 Q. There are a few handguns that some of the plaintiffs have  
17 testified that they would like to purchase that are off the  
18 roster.

19 Are you familiar with a Glock 19, 5th Generation?

20 A. Yes.

21 Q. Are you familiar with a Sig Sauer P365?

22 A. Yes.

23 Q. Are you familiar with a Ruger LCP MAX?

24 A. Yes.

25 Q. Same question for a Smith & Wesson Shield Plus and a

1 Staccato P?

2 A. Somewhat familiar; somewhat, yes.

3 Q. And all of those are off-roster handguns?

4 A. Correct.

5 Q. And does Unsafe Handgun Act prevent somebody from  
6 possessing those handguns?

7 A. Because they have not been tested or do not have the  
8 chamber load indicators or magazine disconnects, yes.

9 Q. Possession? Sorry.

10 A. Oh, possession. Oh, no.

11 Q. Are there pistols, or semi-automatic pistols, on the  
12 roster that are generally similar to those five semi-automatic  
13 pistols that we just discussed?

14 A. They are semi-similar in the sense of magazine capacity  
15 and rounds that they chamber.

16 Q. Can you turn to tab 20? And what is the make and model of  
17 this firearm?

18 A. This is a Glock 19, 9mm pistol.

19 Q. Is it a 3rd Generation?

20 A. This is what they would call a 3rd Generation, yes.

21 Q. And, I guess, can you discuss some of the similarities and  
22 differences between the 3rd Generation and the 5th Generation?

23 A. So with the 5th Generation, they took away the little --  
24 the grip. You see the grip -- you see the little indentations  
25 where your fingers would go towards the front of the grip?

1 They took that away on the 5th Generation because some found it  
2 bothersome.

3 The backstraps, they added where you can remove the  
4 backstrap for people with smaller hands. They could put a  
5 smaller backstrap and be able to handle the firearm a little  
6 bit better.

7 The recoil spring on the inside, they changed it, starting  
8 with the 4th Generation. It's a little heftier.

9 The 5th Generation is a little thicker, a little more -- I  
10 guess, like I said, heftier in the sense where it's made for --  
11 so they changed the slide, the pin that fires the trigger --  
12 the trigger weight and pull. It's just for better handling, I  
13 guess, in a sense that they stated.

14 Other than that -- what else did they change? I think  
15 that's about it. Oh, the magazine release. They made it a  
16 little bigger, and they made it, also, ambidextrous, so you  
17 could switch it out and reverse it.

18 Q. In your opinion, do any of those changes affect -- or, I  
19 guess, do they affect the ability of the firearm to shoot?

20 A. No.

21 Q. Can you turn to tab 21? And can you describe just the  
22 make and model of tab 21 and then also the make and model of  
23 tab 22?

24 A. Yes. This is a Glock, model 26, 9mm.

25 And number 22 is Sturm, Ruger LC380CA.



1 Q. And are these accurate photos of handguns that are on the  
2 roster?

3 A. Yes.

4 Q. And differences and similarities that you discussed  
5 between the Glock 3rd Generation and the Glock 5th Generation,  
6 are those similarities and differences about the same between  
7 these on-roster handguns and the off-roster handguns?

8 A. With the Glock 26, I think the comparison was -- there was  
9 a comparable firearm; right? And I believe it was just a  
10 little shorter, like, .7 inches longer than the -- I believe it  
11 was -- was that the 320?

12 Q. So the five off-roster ones were the Glock 19 5th  
13 Generation, Staccato P, the Sig Sauer P365, the Ruger LCP MAX,  
14 and the Smith & Wesson Shield Plus?

15 A. Okay.

16 Q. So the differences between the on-roster and off-rooster  
17 firearms, would you describe them -- like, I guess, generally,  
18 what would you describe them as.

19 A. They're just slight variations, either in weight or  
20 overall length, I guess you could say.

21 what else? Magazine capacity. Glock would allow for  
22 more -- you could use different types of magazines from  
23 different series of firearms where the comparable would only  
24 allow to, like I said, 12 rounds, depending on what model it  
25 is.

1 For the LCP, the LC380, it was looks like point -- I  
2 believe it's .7. It was bigger than the other Rugers but not  
3 too much of a difference overall. They're all still  
4 concealable firearms.

5 Q. And do you believe that public safety would be put at risk  
6 if the handgun roster requirements were not in effect?

7 A. Yes.

8 Q. And why?

9 A. Because like with any product, you want to make sure they  
10 fall under certain safety guidelines. You don't want to go  
11 back towards a crude, like I said, Saturday Night Special  
12 that's made without any type of testing.

13 Q. Do you believe the current handgun roster requirements  
14 help to protect firearm owners and those who reside with  
15 firearm owners?

16 A. Yes.

17 Q. And do you believe that the handgun roster requirements  
18 made it more difficult for someone to defend themselves?

19 A. No, I do not.

20 Q. And does a chamber load indicator, magazine disconnect  
21 mechanism, or microstamping make a handgun less useful for  
22 self-defense?

23 A. What was that question again?

24 Q. Does a chamber load indicator make a handgun less useful  
25 for self-defense?

1 A. I mean, there can be occasions, like I said, during a  
2 tactical reload, where it might impede it.

3 Q. For a chamber load indicator?

4 A. Oh, not for a chamber load indicator.

5 For a chamber load indicator, I don't see an issue in it  
6 being an issue.

7 Q. And then, do you think a magazine disconnect mechanism, in  
8 most circumstances, impede somebody's ability to defend  
9 themselves?

10 A. I do not believe so. It would just impede maybe a few  
11 seconds if you had to reload. But I don't see it being a big  
12 major safety issue.

13 Q. Does microstamping make a handgun less useful for  
14 self-defense?

15 A. No, it does not.

16 MR. SAROSY: Your Honor, I would like to move  
17 Exhibits 20 to 22 into evidence.

18 THE COURT: Any objection?

19 MR. DALE: No objection.

20 THE COURT: Those exhibits will be received into  
21 evidence.

22 (Exhibits 20, 21, and 22 were received into evidence.)

23 MR. SAROSY: All right. That's all I have, Your  
24 Honor.

25 THE COURT: It's 3:30. We need to give our court

1 reporter a break.

2 How much longer do you anticipate with the witnesses? I  
3 know we have Cross-examination of this one.

4 MR. BRADY: I would anticipate 20-ish minutes, 15. I  
5 think I can get done -- it might be. I have quick questions.  
6 It depends on the witnesses.

7 THE COURT: Right, right. I am trying to get a gauge  
8 so I'll be transparent. Can everybody come back tomorrow? Or  
9 were you hoping to be done today?

10 MR. DALE: Well, We're always hoping to be done. I  
11 am sure you are as well, Your Honor. I can certainly be  
12 available tomorrow.

13 THE COURT: I just don't want to rush it, and I don't  
14 know how long my 4:00 is going to go.

15 MR. DALE: Understood.

16 THE COURT: What is everybody's preference? Do you  
17 want to just quit now and then come back tomorrow? Or would  
18 you rather try to get in a little bit more? But I really don't  
19 feel comfortable staying past 5:30.

20 MR. SAROSY: I think our preference would be to try  
21 to get it done today, because Mr. Gonzalez is in Sacramento and  
22 Mr. Woods is in San Francisco. But I think we can change  
23 travel plans if needed.

24 THE COURT: I'll check with Rolls and our court  
25 reporter and see how late that they can go, and then I'll let

1 you know. Let's take a ten-minute break now, and then we'll  
2 pick back up.

3 MR. SAROSY: Thank you, Your Honor.

4 MR. DALE: Thank you, Your Honor.

5 THE COURTROOM DEPUTY: All rise. This Court is in  
6 recess.

7 (A brief recess was taken.)

8 THE COURTROOM DEPUTY: Please come to order. This  
9 Court is again in session.

10 THE COURT: Okay. Let's start Cross-examination,  
11 please.

12 MR. BRADY: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BRADY:

15 Q. Hello, Special Agent Gonzalez.

16 Do you recognize the document -- can you see this on your  
17 screen?

18 A. Yes.

19 Q. Do you recognize what that document is?

20 A. It's probably a handout or past -- looks like a printout  
21 of the handguns certified for sale.

22 Q. A printout of the handgun roster?

23 A. Correct.

24 Q. I am going to turn to what is on this page, page 14 of  
25 219.

1 Is there a way --

2 THE COURTROOM DEPUTY: If you need to, you might need  
3 to turn on the lamp again.

4 MR. BRADY: This one?

5 THE COURTROOM DEPUTY: No. This one right here. You  
6 might need to see if that's better.

7 MR. BRADY: No. That works.

8 THE COURTROOM DEPUTY: It works? Okay.

9 MR. BRADY: Thank you.

10 Q. Okay. So was it your testimony that they're around 829  
11 handgun models currently on the roster?

12 A. As of January 1, 2023.

13 Q. Okay.

14 A. Yes.

15 Q. Would you agree that there are handgun models listed on  
16 the roster that are only cosmetically different from handguns  
17 that are listed as separate models on the roster?

18 A. If I understand your question, if there are -- what they  
19 call cosmetically different would be something called a  
20 "similar," that we call, to the tested model, which is the  
21 original model and they're just cosmetically changed -- is that  
22 what you're saying?

23 Q. If that's your -- let's start with that question. With  
24 that understanding, would there be -- would similars, in that  
25 context, be listed differently on the roster as separate

1 models?

2 A. They would if they came out of a with different scheme --

3 Q. Okay. As the model number?

4 A. As the model number, yeah.

5 Q. Okay. So I will try to do this quickly. Do you see right  
6 here, entry -- the Beretta 92 -- I'm sorry, the Beretta 96.

7 A. Yes.

8 Q. And it's alloy steel; correct?

9 A. Uh-huh.

10 Q. It has a barrel of 4.9 inches?

11 A. Yes. And there is the 96 -- the Beretta 96 black Inox  
12 stainless steel?

13 A. Correct.

14 Q. And 4. -- are these the same gun?

15 A. Technically, the one would have been -- I don't know if  
16 this is technically what happened here, but let's say the black  
17 one is the tested, so let's say the original black -- I thought  
18 I saw it somewhere. So if there's a black one. They would  
19 send what we call a "similar" with differences. They would  
20 state, "Okay. We're going to change the color. So we're going  
21 to change it to" -- like, you saw that Tiffany Blue kind of  
22 semi-automatic pistol; right?

23 Q. Yes.

24 A. So they just changed the color. That's like a cosmetic  
25 change, so it would be "similar." We would verify that they

1 are the same on the inside as the tested, and then it would get  
2 approved.

3 Q. And it could be listed as a separate model?

4 A. Correct. Based on the color and whatever physical changes  
5 on the exterior were, yes.

6 Q. Okay. So with that understanding, would it be fair to say  
7 that relying on how many handgun models are listed by sheer  
8 number on the roster would be an exaggeration of how many  
9 actually different models there are?

10 A. Well, there is -- I didn't remember the number, but there  
11 are -- in the 829, there are similars along with those tested  
12 models, yes.

13 Q. Sure. So do you understand my question?

14 A. Yes.

15 Q. These three or four 92s are essentially the same gun;  
16 correct? Beretta 92s that are listed there?

17 A. So it's similar to, like, a car; right? So you get a  
18 newer -- it's basically a newer gun in the sense that they  
19 changed the color, but it still remains the same inner workings  
20 as the previous model, like the previous car; right?

21 Q. Sure.

22 A. They just changed the exterior look of it somehow.

23 Q. Okay. But it's purely exterior that we're dealing with  
24 the differences here? There's nothing different about --

25 A. Correct.



1 (The court reporter interrupted.)

2 MR. BRADY: This, Your Honor, has already been --  
3 this is Exhibit 1 to the Plaintiffs' Request for Judicial  
4 Notice, this document. I don't know if Your Honor wants us to  
5 enter it as a separate document, for purposes of this hearing,  
6 or just refer to it as that?

7 THE COURT: I am not sure I follow your question.  
8 Has it already been received into evidence?

9 MR. BRADY: It has been -- well, our Plaintiffs'  
10 Request for Judicial Notice hasn't been ruled on by Your Honor  
11 yet, I don't believe.

12 THE COURT: So let's go ahead and -- so I don't have  
13 to worry about judicial notices.

14 MR. BRADY: Sure, sure.

15 THE COURT: So that's the roster. I assume there is  
16 no objection to the roster?

17 MR. SAROSY: No, Your Honor.

18 THE COURT: Exhibit 1 will be received into evidence.  
19 (Exhibit 1 was received into evidence.)

20 MR. BRADY: Thank you, Your Honor.

21 Q. Have handguns been removed from the roster?

22 A. Yes.

23 Q. And are you familiar with the reasons that a handgun would  
24 be removed from the roster?

25 A. Within the last maybe, let's say, three to four years, I

1 typically would be.

2 Q. What are those -- I guess let's start with, like,  
3 generally. What would be the general reasons that a firearm  
4 would fall off or be removed from the roster?

5 A. Well, like, some of these that you noticed on the roster  
6 and you see expiration dates, either they expire based on  
7 certification. So either the process of the renewal is in the  
8 mail somewhere and they haven't received the application,  
9 everything necessary to renew that firearm, that is one thing.

10 Typically, if they fall within the first year of  
11 expiration, it will be, like, 1/1/23. Let's say it expired  
12 that day. That is because either the application is in the  
13 mail and hasn't been processed fully. So that's when they fall  
14 off.

15 If it's like an internal change that is noticed, let's  
16 say, after the fact, then -- and the manufacturer failed to  
17 notify us previously that there was a change made and they have  
18 no reasoning or anything that they could tell us why they made  
19 that change, then it's decided that they should fall off the  
20 roster until they could either go back to the previous way of  
21 manufacturing that they manufactured that pistol or have some  
22 type of reason to show us that the device basically is the same  
23 or works the same way, or the firearm works the same way.

24 Q. So if I am understanding you correctly, you identified two  
25 ways that a firearm would be removed from the roster. Its

1 certification would expire?

2 A. Correct.

3 Q. Or there would be a change to that handgun model that  
4 would warrant DOJ making a determination that it's now a  
5 different model not worthy of certification; is that correct?

6 A. Yes. If they failed to notify us of the changes, yes.

7 Q. Okay. Or DOJ hasn't made a determination but has made a  
8 determination that manufacturer did not notify DOJ about the  
9 changes; is that correct?

10 A. Correct. And we noticed those changes, yes.

11 Q. Okay. How does a firearm expire off the roster?

12 A. Well, like I said, there is an annual recertification fee,  
13 which they have to pay. It's, like I said, a \$200 maintenance  
14 fee, they call it. So every year they have to reapply and pay  
15 that \$200 and state that to keep the handgun on the roster.

16 Q. So if a manufacturer failed to pay the \$200 fee, their  
17 firearm would be removed from the roster?

18 A. Until it's received, correct.

19 Q. Until it's received?

20 A. Yes.

21 Q. So if they failed to pay on the date it's due and it gets  
22 expired and then they go, "Oh, we made a clerical error," and  
23 then submit the \$200 later, their gun gets put back on the  
24 roster?

25 A. I would have to get further -- since I don't oversee it, I

1 would to have to speak to the actual what we call the associate  
2 gun analyst that actually handles that. But they would give a  
3 certain period to have the firearm placed back on the roster,  
4 based upon when we receive it and when they postmark it and  
5 everything like that.

6 Q. Okay. Are you familiar with the fact that several HK,  
7 Heckler Koch, handguns have recently been removed from the  
8 roster?

9 A. Yes.

10 Q. Do you know the reasons why those handguns were removed?

11 A. Yes.

12 Q. Can you explain to this Court?

13 A. Yes. In August of 2021, we received -- I believe it was  
14 two handguns that were -- I believe they said they were  
15 similar. So similar meaning they just made a few exterior  
16 changes, nothing that would internal physically change the  
17 firing mechanism or hammer assembly or trigger; right?  
18 So these are called -- they stated they were similars.

19 when they received them, I took a look at them side by  
20 side, with the tested model. The tested model was the original  
21 that was submitted. I'll try to remember how long ago it was  
22 submitted, but it was already on the roster.

23 So I took a look at it side by side. I noticed that the  
24 hammer assembly had changes, had divots that the original  
25 tester did not have. It had, like, a little hammer -- the axle

1 that the hammer goes on had some changes. The sear was  
2 elongated on one and not the other. And there was a little cut  
3 and divot on the actual sear itself which wasn't on the other.

4 Q. So those were the -- they were minor changes -- I'm sorry.  
5 Strike that. I don't want to put words in your mouth.

6 There were alterations to the handgun that you personally  
7 deemed took it outside of the certification originally?

8 A. It's not a personal deeming. I just look at it, and then  
9 I tell people my observations, and then the Department will  
10 decide if they're going to -- based on the regulations and the  
11 code if they are going to have them removed.

12 We did not start there. We went -- I personally went to  
13 dealers to try to get examples of these firearms to see if they  
14 were actually being sold in this way.

15 H&K actually contacted us and told us -- it was, like, a  
16 two-part story; right? The originals were denied. A few  
17 months after, H&K came back and contacted us in regards to them  
18 stating that they possibly had made changes on other firearms  
19 and just wanted to let us know about that situation.

20 Q. Okay. What sort of change would warrant a removal from  
21 the roster? Would changing a spring or a screw or a divot on a  
22 particular feature?

23 A. No. Divots are typically made by manufacturers to tell  
24 them exactly, like, what generation slide they have. So  
25 they'll put certain divots inside the slide, and they're able

1 to differentiate, okay, this is a Gen -- I don't how they will  
2 call it; right? But this is a Gen4 slide. This is a Gen5.  
3 And they'll put the little divot. So that was not -- that's  
4 not something we take into consideration.

5 Springs, if they're similar, pretty typical, it doesn't  
6 warrant the removal.

7 But when it's almost the whole assembly or close to the  
8 whole assembly, where it has not been tested -- the drop test  
9 has not then occurred; right? We don't know if it's going to  
10 fire off a round during the drop-safety test.

11 Q. Sure.

12 A. That has not been tested.

13 Q. I understand that. I guess -- and I think you answered my  
14 question with respect to the divots. You said, if I understood  
15 you, the divots basically told you that this wasn't -- that  
16 there was something different. It wasn't the divot that made  
17 you say, "Okay. We've got to take this off the roster." It  
18 was the divot that made you look closer; is that correct?

19 A. Well, like, in another firearms, right, we've had --  
20 depending on the divot, right, there is divots that the  
21 manufacturer has placed on the slides. And we reach out to the  
22 manufacturer. This is how we know; right?

23 Let me state these divots are made because of the  
24 generational, so we could tell the difference.

25 When it came to H&K, it was -- you call it, probably --

1 that's why you call it a divot, inside of the hammer, but it  
2 looks like a little cutout, a divot in that sense.

3 Plus, the sear, the auto sear got cut off -- auto sear  
4 weight. I didn't go -- I didn't take the firearm fully apart  
5 to look inside internally, because I could already tell from  
6 the outside that it was changed.

7 Q. Okay. The one part I don't think I got an answer to was,  
8 what level of change will reach the point where it's now  
9 warranted to say, "This is a different gun than the one that  
10 was tested"?

11 The changing of screws? The manufacturing process of a  
12 screw on a firearm warrants saying, "Okay. This needs to be  
13 removed from the roster until they change it back"?

14 A. No. Screws are not something that we would decline a  
15 firearm for. It's more, like I said, internal parts. And in  
16 this instance, you can tell the part looked different.

17 Q. Okay.

18 A. Or the parts. There were four different parts that we  
19 could see from the outside.

20 Q. You testified that you are familiar with the requirement  
21 of the Unsafe Handgun Act that, if a handgun is added because  
22 it has microstamping technology, that a certain number of  
23 handguns fall off or are removed from the roster. I don't know  
24 if we decided whether it's two or three, but some --

25 A. It's three. It as three.

1 Q. It's three. So one comes on because it has  
2 microstamping, --

3 A. Uh-huh.

4 Q. -- and three come off. Is that accurate?

5 A. Yes, correct.

6 Q. How is the decision made which three handguns get removed  
7 from the roster? Do you know?

8 A. I know that they were still in the talks about that, so I  
9 cannot be able to give -- tell you the answer because I know,  
10 at one point, it was -- like we were speaking about earlier on  
11 the roster, the list you had, if you were to remove one, it  
12 wouldn't take off the black one, the blue one, you know, the  
13 red one, even though they're technically based off the same  
14 model. It would just take off based on dates.

15 So if the blue one was introduced in 2001, then it would  
16 take off the oldest one; the black 2001. It wouldn't affect  
17 the blue 2005, even though it's, technically, a similar model;  
18 right? So it would go based off expiration dates.

19 Q. Okay.

20 A. Or initial initiation, like, of the application dates.

21 Q. Is it starting with the oldest guns on the roster or the  
22 newest guns on the roster that are being removed? Or do they  
23 not know yet?

24 A. Oldest.

25 Q. The oldest?



1 A. Oldest, yes.

2 Q. Are you familiar with any models currently on the roster  
3 that have the ability to configure the magazine release, the  
4 safety and slide release ambidextrously? I know you testified  
5 about some models that have each of those features.

6 Is there any handgun model on the roster that has all  
7 three of those?

8 A. That I have seen, no. I haven't, technically, gone  
9 through every single one, so -- I haven't had the time, but  
10 that I know, no.

11 Q. I believe you testified that a chamber load indicator  
12 complements -- is a complement to safety protocol. Is that  
13 accurate?

14 A. Correct.

15 Q. Are you familiar with the four Cooper Rules of firearm  
16 safety?

17 A. Yes. Always point in a safe direction; make sure you  
18 don't -- you know where you're pointing, so, yeah.

19 Q. What is the first rule of the four Cooper Rules of firearm  
20 safety?

21 A. Like, knowing your firearm. Basically, know your firearm.  
22 If you know it's unloaded, kind of thing, point it in the right  
23 direction. I am trying to remember.

24 Q. If I can -- is it your understanding that the first rule  
25 is that a firearm is always to be treated as if it were loaded?

1 A. It is loaded, correct.

2 Q. Even if you know it's unloaded -- or even if you know it's  
3 unloaded, you see that it's unloaded, you still treat that  
4 firearm as if it's loaded; is that correct?

5 A. Correct.

6 Q. That is basic firearm safety training 101; correct?

7 A. Correct.

8 Q. Does the presence of a chamber load indicator on a handgun  
9 alter how you treat a firearm in any way?

10 A. Based on my training, of course, it's a helpful thing to  
11 see; right? You are going to come up and see that the flag is  
12 up, but I am always going to check to make sure if it's loaded  
13 or not. You don't want to -- like, for example, you don't want  
14 to go out on duty and -- let's say, you discharge -- you happen  
15 to discharge your weapon, and it won't fire. Or you got to the  
16 training range, and you shoot your handgun, and it doesn't  
17 fire. So you -- you're not always going to rely -- it's more,  
18 like I said, a complement. You want to also visually check  
19 yourself.

20 Q. Sure. I understand it's your position it's a complement.

21 My question was more along the lines of does it change  
22 your behavior in any way when you have a chamber load indicator  
23 on the handgun.

24 A. No, it does not. Based on my training, no.

25 Q. And that is because you treat a firearm as if it was

1 loaded at every instance; correct?

2 A. Correct.

3 Q. Can you explain -- I believe you testified that you think  
4 chamber -- it's your opinion that chamber load indicators are  
5 helpful to protect people from themselves or harming others  
6 when they obtain a firearm; is that correct?

7 A. Correct.

8 Q. How can somebody who has no firearm training be benefited  
9 by a chamber load indicator?

10 A. Well, if they would come up to a firearm and they see that  
11 a red flag is up or the wording on it says, "Loaded," or there  
12 is a picture saying -- or somehow that states that it's a  
13 loaded firearm, it's not going to guarantee they're not going  
14 to handle the firearm; right? But, you know, it kind cautions  
15 them to say this is a loaded firearm.

16 It's kind of like coming up to a house, and there's a  
17 warning sign, "A dog." Would you be more cautious if there was  
18 a sign that said, "Do not approach. Caution. Dog"? Or would  
19 you be more cautious if there was no sign and you couldn't see  
20 past beyond the fence; right?

21 well, it's the same thing. It's, like, you'd be more  
22 cautious if you actually saw the sign that said, "Dog."

23 Q. If I treated all properties as if there was a rabid dog on  
24 there, it wouldn't make a difference; right?

25 A. But we don't.

1 Q. But that is -- but people don't -- that's because people  
2 don't have the firearm training, right? The number one rule is  
3 to treat firearms as if they're always loaded; right? That's  
4 the concern? That's the problem; right?

5 A. Well, it comes along with the training. I'm sure not  
6 everybody has the proper training, correct.

7 Q. But if somebody doesn't have the proper training about the  
8 number one rule of firearm safety, wouldn't it be unreasonable  
9 to expect them to have the training and understanding of what a  
10 chamber load indicator means?

11 A. Not exactly. Because sometimes kids -- right? -- you are  
12 already born knowing -- if you see a spider, you are scared of  
13 it. You see certain things. You kind of draw your attention  
14 to say, "I'm not going to touch this."

15 And so by -- we already kind of -- like, with some of  
16 these magazine disconnects, we already see some type of bright  
17 colorizations, something like that, as danger signs. So even  
18 though it's not going to stop every accidental shooting or  
19 death, it might prevent some.

20 Q. Would you expect a child that is at risk of harming  
21 himself or herself or somebody else with a firearm to  
22 understand what a chamber load indicator is, in that instance?

23 A. Yes, depending on the age, yeah. A chamber load indicator  
24 may not -- probably, most likely, will not, depending on the  
25 age. But I couldn't tell you what age.

1 Q. Would you agree that for young children they pretty much  
2 aren't worth much?

3 A. Yeah, depending on the age. I couldn't tell you what the  
4 age would be, but there are some children that wouldn't  
5 understand.

6 Q. Have you ever witnessed a chamber load indicator fail?

7 A. I personally have not, no.

8 Q. Have you heard of any incident where a chamber load  
9 indicator has failed?

10 A. No, I have not.

11 Q. To your knowledge, are revolvers required to have a  
12 chamber load indicator to be on the California roster?

13 A. No, they're not.

14 Q. Why not?

15 A. Because for some reason -- I didn't write the legislative  
16 thing, you know. But -- I wasn't involved in that, but I don't  
17 know what the reason is.

18 Q. We understand that, Special Agent. I guess my question is  
19 would there -- is there a difference, in your firearm  
20 expertise, between a semi-automatic handgun and -- a  
21 semi-automatic pistol and a revolver as to why one would  
22 benefit from a chamber load indicator and the other would not?

23 A. The only thing I can see is just that the cartridges are  
24 round and visible in the revolver where, when it comes to the  
25 semi-automatic, it's all enclosed inside. But other than that,

1 I do not know why.

2 Maybe it's the weight, the weight of the trigger, but I  
3 don't see what the difference would be or how they did the  
4 chamber load indicator on there.

5 Q. Is the round that would be in the chamber on a revolver in  
6 the cylinder visible?

7 A. Technically, yeah, it would not be.

8 Q. It would not be; right? If it's in the chamber -- the  
9 other rounds that are not in the chamber, at least some of them  
10 might be visible, but the one that is in the chamber would not  
11 be visible on a revolver?

12 A. Correct, correct.

13 Q. Do you have any forensics training?

14 A. No, I do not.

15 Q. Would you personally be able to determine whether a  
16 firearm possesses microstamping technology?

17 A. No.

18 Q. Have you been trained on determining the presence of  
19 microstamping technology?

20 A. No, I have not.

21 Q. To your knowledge, is anybody at the Department of Justice  
22 Bureau of Firearms been trained on that?

23 A. I know they have. Prior to myself, they were giving  
24 presentations, but I don't know exactly to what extent.

25 Q. Have you ever touched a firearm with microstamping

1 technology?

2 A. I have.

3 Q. Does presence of microstamping technology on a handgun  
4 make it any safer?

5 A. Safer in the sense of --

6 Q. For the user.

7 A. For the user, no.

8 Q. Or for anybody around them? And I'm talking about direct  
9 harm. I understand the safety aspect of microstamping fighting  
10 crime, solving a crime. I get that. I am talking about the  
11 direct harm from the firearm itself.

12 A. No. In that sense, no.

13 Q. Thank you.

14 So what is microstamping's purpose, as you understand it?

15 A. It's just to cut down on the lead time involving a crime,  
16 get to the actual owner, the gun -- not the gun itself but the  
17 gun information quicker, faster.

18 Q. Is it fair to call it a law enforcement aid?

19 A. Yes. Law enforcement aid. And it's a public safety issue  
20 as well. Like I said, if it's some type of guy involved, like  
21 a serial killer, in a sense, it would lead to a faster time of  
22 figuring out who the person is. And in that sense, it would be  
23 a public safety issue.

24 Q. In your experience, guns that are used in crimes, are they  
25 usually stolen?

1 A. It all depends.

2 Q. Let me strike that "usually."

3 Are they oftentimes stolen guns?

4 A. I couldn't say, "Yes" or "No." I couldn't say, "Yes" or  
5 "No."

6 Q. Have you ever come across stolen -- a criminal who you  
7 arrested and they had in their possession a stolen gun?

8 A. Yes.

9 Q. Are stolen guns often used in crimes, to your knowledge?

10 A. Yes, they're used in -- I am sure they're used in crimes  
11 often.

12 Q. Okay. And in your experience, as a law enforcement  
13 officer, do crime guns change hands fairly frequently, or do  
14 bad guys hang onto their guns for an extended period of time?

15 A. I wouldn't be able to tell you that, yeah.

16 Q. To your knowledge, has DOJ Bureau of Firearms ever  
17 contacted any handgun manufacturer to collaborate on developing  
18 microstamping technology?

19 A. Since I've been there, that I know of, I do not -- no, I  
20 have not heard anything.

21 Q. Are you aware of any study that the California Department  
22 of Justice Bureau of Firearms has ever conducted on  
23 microstamping?

24 A. The only thing I know of is a presentation, probably 2014,  
25 I believe. But I don't know if it was an actual study or not.



1 I know they had people that come in and present what  
2 microstamping was and the training aspect of it and what it  
3 involved, but I don't know anything else beyond that.

4 Q. So, to your knowledge, you don't know whether DOJ has  
5 performed a study, a field study, discharging firearms to  
6 determine whether microstamping technology works?

7 A. No.

8 Q. Are you aware of any other government entity that has done  
9 that type of study?

10 A. No, I do not. I am not aware.

11 Q. Do you shoot firearms often?

12 A. Yes -- well, kind of, yes.

13 Q. Kind of?

14 A. Well, quarterly, we do have firearms training. Like I  
15 said, I'm an instructor as well, so I'm out there shooting with  
16 other agents.

17 Q. Okay. So do you carry a firearm on duty?

18 A. Yes.

19 Q. How many rounds do you think you put through your duty  
20 weapon?

21 A. I don't know. Hundreds, maybe.

22 Q. Hundreds?

23 A. Yes.

24 Q. In your trainings, your quarterly training, how many  
25 rounds do you discharge out of your duty weapon?

1 A. At least -- depending on the training, we'll say 300. I  
2 would say average of 300 to 500, depending on the training.

3 Q. Outside of that training, you don't discharge your duty  
4 weapon that often?

5 A. Just would go to the range, go to the range to practice  
6 shooting, but not too many rounds.

7 Q. What about any personal firearms? Do you have any  
8 personal firearms that you discharge more often than your duty  
9 weapon?

10 A. No. I have -- I don't know if you are asking me exactly,  
11 but no.

12 Q. Okay. Are you familiar -- do you know whether there are  
13 any devices that can be affixed to handguns to catch the brass  
14 as it is being ejected so as to not stay on -- not be left  
15 behind?

16 A. I am sure there are devices of every type around.

17 THE COURT: Counsel, I probably really need to break  
18 for the 4:00 o'clock matter.

19 MR. BRADY: I'm going to be done in, like -- I mean,  
20 I could come back if your Honor wants. I can stop here, if you  
21 want.

22 THE COURT: Is there going to be Redirect?

23 MR. SAROSY: It would be very brief, Your Honor.

24 THE COURT: Okay. Why don't we break, then?

25 MR. BRADY: Okay.

1 MR. DALE: Would you like us to clear our table?

2 THE COURT: I would, if you could do that.

3 (Adjourned at 4:18 p.m. to hear another matter.)

4 THE COURTROOM DEPUTY: Please come to order. This  
5 Court is again in session.

6 THE COURT: All right. Please proceed.

7 MR. BRADY: Thank you, Your Honor.

8 SALVADOR GONZALEZ,  
9 **previously called by and on behalf of Defendant, testified:**

10 CROSS-EXAMINATION

11 BY MR. BRADY:

12 Q. Special Agent Gonzalez, you testified that you carry a  
13 handgun for duty use; is that correct?

14 A. Correct.

15 Q. Was that handgun issued to you by the California  
16 Department of Justice, or did you choose it?

17 A. By the California Department of Justice.

18 Q. What model handgun is that?

19 A. It's a Glock 23 Generation 4.

20 Q. Glock 23 Generation 4.

21 Is that on the roster?

22 A. No, it is not.

23 Q. Does your duty handgun have a chamber load indicator?

24 A. Well, according to Glock, it does. According to the State  
25 of California, it does not.

1 Q. Can you explain that for us?

2 A. So as Glock refers to it, it's called a loaded chamber  
3 indicator, which is similar, in the sense, to those that know  
4 firearms, right, it's attached to the extractor of the Glock.  
5 So when you load a round in the chamber, the extractor comes  
6 out just a tiny bit. Maybe if you have good sensitivity to  
7 your fingers, you can feel the difference. Some don't go by  
8 that or it's not -- doesn't fall within the California standard  
9 of a chamber load indicator because it does not contain the  
10 contrasting colors or wording or design.

11 Q. Okay. Thank you. Does it have a magazine disconnect  
12 mechanism?

13 A. No, it does not.

14 Q. Does it have microstamping?

15 A. No, it does not.

16 Q. Were you able to choose among various models that the DOJ  
17 made available to its agents?

18 A. There was only the Glock 23 or the Glock 22.

19 Q. And what generation is that Glock 22?

20 A. I think that's Generation 4 as well.

21 Q. Generation 4. So it's not on the roster either?

22 A. Correct.

23 Q. And it doesn't have a magazine disconnect mechanisms?

24 A. Correct.

25 Q. And it only has the chamber load indicator that you were

1 talking about, that Glock calls the chamber load indicator that  
2 is not one under California law?

3 A. Correct.

4 Q. And it doesn't have microstamping either?

5 A. Correct.

6 Q. So the only model handguns that the California Department  
7 of Justice offers its Special Agents for duty use are handguns  
8 that are not on the California roster and that possess neither  
9 a chamber load indicator, as California defines it, a magazine  
10 disconnect mechanism, or microstamping; is that correct?

11 A. Correct.

12 Q. Do you carry a handgun off duty?

13 A. I do not.

14 Q. This might be redundant. I apologize. So are all special  
15 agents limited to either one of those two Glock models you just  
16 identified, for their carry weapons?

17 A. As a handgun, yes.

18 Q. And you've testified earlier, I believe, about the  
19 differences between the Gen -- the Glock Gen3 and the Gen5, and  
20 you pointed out some differences.

21 Are those the same differences between the Gen4 and the  
22 Gen3 as well?

23 A. No. The Gen5 is a little bit more -- I guess you could  
24 say it's a little heftier, a little thicker. They still have  
25 both -- the Gen4 and the Gen5 both have the backstraps,

1 removable backstraps. The Gen4 still has indentations on the  
2 grip, where, you know, your fingers basically mold into. It  
3 does have -- the Gen4 does have the upgraded recoil spring.  
4 The slide is changed a little bit. But other than that, pretty  
5 similar. I think they also improved a little bit of the  
6 trigger pull.

7 Q. They improved the trigger pull?

8 A. On the 5, on the 5th one.

9 Q. What about the barrel?

10 A. The barrel, on the 5th, on the Generation 5, they -- it's  
11 stated that they improved the barrel for a more accurate, I  
12 guess, shooting. This is also based on who states it; right?  
13 But that is what they state.

14 Q. So you are saying it's Glock's position that the Gen5 is a  
15 superior firearm to its previous iterations?

16 A. In regards to, like, the barrels and stuff that, they do  
17 state that improvement of technology. That is what it says,  
18 improvement of technology in regards to the Gen3 or Gen4.

19 Q. Do you share Glock's opinion that its Glock Gen5 is  
20 superior to its previous iterations?

21 A. It's kind of similar to kind of owning a iPhone 13 and an  
22 iPhone 14; right? Sometimes people want the newest model even  
23 though the older model still does basically the same thing;  
24 right? It's just a few changes. Maybe a new lens or whatever,  
25 but it still functions the same but just a newer improvement.

1 Q. Sure. That makes sense, and I hear you.

2 But are all the changes on the Glock of that nature?  
3 Aren't some, as you indicated, increasing accuracy,  
4 potentially? And the removal of backstrap, what does that for?  
5 Is that to help ergonomics so that you have a better fit on the  
6 gun?

7 A. According to -- they removed the grip from, like I said,  
8 the Glock 4 to the Glock 5 -- which was also on the Glock 3 --  
9 the little indentations because people were complaining of the  
10 handling of the gun. I guess you could say it was  
11 uncomfortable.

12 They increased the magazine release from the 3 to the 4.  
13 They kept it from the 4th to the 5th, the same magazine  
14 release. It's a little bigger.

15 what they call the stripling, they kind of changed it a  
16 little bit, made it a little more aggressive, in a sense.

17 Q. Okay.

18 A. It's a little bit more grip. And the backstraps are --  
19 were meant to be in case your hand, basically, has, like I  
20 said, an ergonomically better fit for smaller hands. In the  
21 case -- like, a Glock 22 is a little bit bigger than a  
22 Glock 23, so that is why some people tend, with smaller hands,  
23 go with a Glock 23 instead of, like, a Glock 22.

24 Q. Would you say that there are significant enough  
25 differences between the Gen3 Glock and the Gen5 that, to your

1 point about some people like this iPhone versus that, that  
2 there would be, in those differences -- those differences would  
3 be significant enough that people would basically want to  
4 choose? Like, I want -- that is substantively better for my  
5 purposes than this other one?

6 A. It all depends. You know, financially, if you are  
7 willing -- you want to pay a little bit more for the newer  
8 product. I mean it all depends -- it would all depend. Like  
9 I --

10 Q. I'm sorry.

11 A. Like I still have my iPhone 10. I haven't gone to the  
12 latest one based on pricing and things like that; right?

13 Q. I think I'm still on 8.

14 A. Yeah.

15 Q. But my point, I guess, is that there are certain  
16 differences between a Gen3 and a Gen5, like the removable  
17 backstrap that changes how you can grip it, that is  
18 substantively different, that can make a difference to the  
19 user?

20 A. Yes. There's more options based on, like I said, smaller  
21 hands. People that wouldn't have gone to a 3 based on they  
22 couldn't grip it correctly. It would allow for the smaller  
23 hands to basically grip that weapon. And I am sure the  
24 shooting, even though slight differences, it would be something  
25 that somebody would want.



1 And the barrel accuracy, that is what it does -- is better  
2 accuracy. It is not like a -- they don't consider it a  
3 competition gun, but they state it's better accuracy than the  
4 Gen3.

5 Q. Understood. Thank you.

6 THE COURT: Agent, maybe this is obvious, but the  
7 Gen5 is not on the roster.

8 THE WITNESS: Correct.

9 THE COURT: So if they just paid a fee, it wouldn't  
10 get on the roster because of those changes; correct?

11 THE WITNESS: Correct, because of the changes.

12 BY MR. BRADY:

13 Q. Do you, Special Agent Gonzalez, know why the California  
14 Department of Justice issues its agents, like yourself,  
15 handguns that are not on the roster?

16 A. Well, specifically, I mean, we have an exception on the  
17 320000 [sic] Penal Code, which -- Section 4 which states that  
18 certain law enforcement have certain exceptions in regards to  
19 acquiring and having guns for, like, official duties, stuff  
20 like that. Within our section, like, law enforcement, like,  
21 local PDs and sheriffs, they're allowed to have these firearms,  
22 as well as section -- what is it 6, 7? -- they have to have  
23 certain post requirements and further training in order to  
24 acquire these firearms.

25 Q. Understood that there is an exception -- an exemption for

1 law enforcement officers, but is there a reason that the  
2 California Department of Justice decided to take advantage of  
3 that exemption and issue its officers only firearms that are  
4 not on the roster?

5 A. I am not aware of the reasoning.

6 Q. They didn't make an analysis of the benefits of chamber  
7 load indicators or magazine disconnects or microstamping on  
8 your firearms?

9 A. That I'm aware of, I don't know.

10 MR. BRADY: That is all. Thank you, sir.

11 THE WITNESS: Thank you.

12 MR. SAROSY: I'll be brief, Your Honor.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION

15 BY MR. SAROSY:

16 Q. Mr. Gonzalez, similar handguns can be added to the roster  
17 without lab testing; is that right?

18 A. Correct.

19 Q. And a similar handgun cannot have any changes to internal  
20 parts?

21 A. Correct.

22 Q. And is the purpose of the lab testing, in your opinion, to  
23 see how the internal parts work?

24 A. Yes. That would be one of the functions during all of  
25 these type of stress tests, the drops, the firing.

1 Q. Is it easier -- because there is no lab-testing for a  
2 "similar," is it easier for a manufacturer to get a similar  
3 handgun added to the roster than a new handgun to the roster,  
4 let's say, pre-microstamping?

5 A. Pre-microstamping? It's easier for a "similar" since it  
6 would not have to go through all the testing, correct.

7 Q. For the H&K USP removal that you were asked about, to your  
8 knowledge, were policies and procedures, including the statutes  
9 and regulations that applied to that situation, were they  
10 followed by the Department of Justice or the Bureau of Firearms  
11 in removing those handguns?

12 A. Yes, they were.

13 Q. To your knowledge, did H&K admit that the hammer  
14 assemblies on the handguns that were removed were different  
15 from the ones that were submitted and tested?

16 A. Yes, they admitted it.

17 Q. And, to your knowledge, was H&K notified about the reasons  
18 for the removal of those handguns from the roster?

19 A. Yes, they were.

20 Q. And in preparing for your testimony today, did you go  
21 through every semi-automatic pistol on the roster to see if it  
22 had an ambidextrous magazine release or ambidextrous external  
23 safety?

24 A. We didn't go through every single firearm. We went  
25 through a lot of firearms.

1 Q. Okay. And is it possible for a parent to tell a child  
2 that, if a gun has a red pop-up on the gun, that that means  
3 it's loaded?

4 A. Yes, it's possible.

5 Q. And for a revolver, when you are, I guess, holding a  
6 revolver, can you see in the barrel which one has cartridges in  
7 it, typically?

8 A. Like we were talking about earlier, if it's in the  
9 cylinder, you can technically see the outer cartridges. But if  
10 it's in the chamber, which is the one that's chambered to be  
11 fired off, it's not going to be as visible as the other ones.

12 Q. Right. So you can't see the one in the chamber, but you  
13 can see the other ones in the barrel?

14 A. Correct.

15 Q. For a semi-automatic pistol, you can't see how many  
16 cartridges are left in the magazine, can you?

17 A. You cannot see how many -- the rounds are in the magazine  
18 or inside the chamber.

19 Q. And to be clear, did you make the decision to issue  
20 off-roster handguns to Bureau of Firearms special agents?

21 A. No, I did not.

22 Q. And do you store your duty gun at home?

23 A. Yes, I do.

24 Q. And how do you store it, typically?

25 A. I pretty much put it in my safe. I get home, walk up, put

1 it in my little lockbox, take the magazine out, and rack it  
2 back, make sure there is no rounds in the chamber.

3 MR. SAROSY: All right. Thank you.

4 THE COURT: Anything further?

5 MR. BRADY: No, Your Honor.

6 THE COURT: Sir, you can step down. Thank you.

7 Okay. We have another witness, don't we?

8 MR. WOODS: Your Honor, we have one more witness that  
9 we can call Mr. Saul Cornell now, Dr. Saul Cornell. He's on  
10 the East Coast, and it is getting fairly late for him. We told  
11 him that he can come back -- he's willing to come back  
12 tomorrow, if that would be better. I can see if I can get him  
13 to testify.

14 THE COURT: See if we can get him to testify.

15 MR. WOODS: All right. Let me try to give him a  
16 call.

17 THE COURT: All right. Great. Thank you.

18 MR. WOODS: I just spoke with him. He will be back  
19 to his computer momentarily.

20 THE COURT: Perfect.

21 THE COURTROOM DEPUTY: Okay. Thank you.

22 (A brief recess was taken.)

23 THE COURTROOM DEPUTY: Mr. Cramer is back now.

24 THE COURT: Rolls, you're going to get electronic  
25 copies of all the exhibits; right?

1 THE COURTROOM DEPUTY: Yes, Your Honor. We discussed  
2 it, and they will be filing a stipulation to file the admitted  
3 exhibit list and the witness list, Your Honor.

4 MR. SAROSY: Your Honor, for the last witness,  
5 Mr. Gonzalez, I forgot to move into evidence Exhibit 8, which  
6 he had spoken about, and I know he just left.

7 THE COURT: That exhibit is received into evidence.

8 MR. SAROSY: Thank you.

9 THE COURT: And, right, you are going to put all of  
10 these exhibits into electronic format, too?

11 MR. SAROSY: Correct.

12 (Exhibit 8 was received into evidence.)

13 MR. SAROSY: Would you like the demonstrative in  
14 electronic format as well?

15 THE COURT: Sure.

16 (A discussion was held off the record.)

17 THE WITNESS: Okay. We're live. Sorry about that.

18 THE COURTROOM DEPUTY: Can you hear me, sir?

19 THE WITNESS: I can.

20 THE COURTROOM DEPUTY: Perfect. And you can see the  
21 Judge?

22 THE WITNESS: I can see the Judge.

23 THE COURTROOM DEPUTY: Perfect.

24 Do you want to call your witness?

25 MR. WOODS: Oh, yes. Sorry. Defendant calls

1 Dr. Saul Cornell to testify.

2 THE COURT: Very well. Rolls, do you want to --

3 THE COURTROOM DEPUTY: Mr. Cornell, please raise  
4 your right hand.

5 Do you solemnly swear the testimony you shall give in the  
6 cause now before this Court shall be the truth, the whole  
7 truth, and nothing but truth, so help you God?

8 THE WITNESS: Yes, I do.

9 THE COURTROOM DEPUTY: Please state your name and  
10 spell your last name for the record.

11 THE WITNESS: Sure. Saul Cornell, C-o-r-n-e-l-l.

12 THE COURT: Please proceed.

13 SAUL CORNELL,

14 called by and on behalf of Defendant, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WOODS:

17 Q. Dr. Cornell, good evening.

18 A. Good evening.

19 Q. Thank you for joining us.

20 where are you currently employed?

21 A. I'm currently employed at Fordham University where I am  
22 the Paul and Diane Guenther Chair in American History and an  
23 adjunct professor of law at Fordham Law School.

24 Q. Great. I am sharing the screen, and hopefully that works.

25 Is this your -- what looks like an accurate copy of your

1 CV?

2 A. Yes, it is.

3 Q. Okay. Is this a document that you prepared, sir?

4 A. Yes.

5 Q. Okay. Great. I'm going to ask some general questions  
6 about your background. If you need to refer to your CV, you're  
7 welcome to.

8 How long have you been employed by Fordham?

9 A. So I've been employed by Fordham since 2009. And before  
10 that, I was at Ohio State University for 18 years, and the  
11 College of William & Mary for two years.

12 Q. And in what context were you employed by Fordham and Ohio  
13 State and William & Mary?

14 A. So William & Mary I was both an assistant professor and a  
15 fellow at the Omohundro Institute of Early American History &  
16 Culture, which is the leading research institute on early  
17 American history.

18 And at Ohio State, I was a the professor of history.  
19 Began as assistant, was promoted through associate to fellow.

20 I also had an appointment at the John Glenn School of  
21 Public Policy.

22 And now I am employed at Fordham University.

23 Q. And do you -- have you received any fellowships and/or  
24 grants?

25 A. Yes, a whole bunch of them. I've had fellowships from the



1 National Endowment for the Humanities, the American Council of  
2 Learned Societies. I was a distinguished Fulbright scholar,  
3 where I taught at Leiden University in the Netherlands. I have  
4 received fellowship support from the Gilder Lehrman Institute  
5 from the Center for the Study of Slavery at Yale University,  
6 which is a distinct part of the Gilder Lehrman Institute. And  
7 I have also been a visiting research scholar at Yale Law  
8 School, the University of Connecticut Law School, and the  
9 Floersheimer Center for Constitutional Democracy at Cardozo Law  
10 School.

11 Q. All right. That's a lot. I realize this is, perhaps, a  
12 big question, but do you have any particular areas of expertise  
13 that you would consider yourself an expert in?

14 A. Yes. So I am an early American historian, a  
15 constitutional legal historian. I have written on a variety of  
16 areas of American political culture, American political  
17 thought, American legal history. I've authored a popular  
18 American history textbook that goes from the Paleolithic era to  
19 the present. I co-authored that.

20 I also co-authored what has become standard history of  
21 American constitutional development from the founding era  
22 through to the Jacksonian period that was published by  
23 Cambridge University Press a few years ago. And I've published  
24 in almost all of the major peer reviewed history journals and  
25 many of the top law reviews in the country, including Yale,

1 william & Mary, Northwestern, UCLA, and there are others, but  
2 I -- that gives you a basic sense.

3 Q. Understood. Can you kind of summarize your scholarship in  
4 constitutional law? I understand you mentioned constitutional  
5 legal history. Is there a particular focus on constitutional  
6 law that is part of that?

7 A. Sure. My first book was on the anti-federalist, the  
8 original opponents of the Constitution. It's still required on  
9 many graduate reading lists. I know they use it at Cambridge.  
10 I know they use it at Princeton. I know it's assigned in many  
11 other places.

12 I've written a book on the Second Amendment. And I've  
13 also written a history -- co-authored a history on American  
14 constitutional development from the founding era through the  
15 Jacksonian period.

16 Q. Great. Have you ever published articles on firearms,  
17 legislation in the historical period?

18 A. So I've published both in peer reviewed history journals  
19 and in top law reviews. The first article I wrote on this, I  
20 published in the Fordham Law Review, although I wasn't yet a  
21 Fordham faculty member. And to this day, it is one of the top  
22 five most cited and downloaded articles published in the  
23 Fordham Law Review, which is, at last, ranking the top 15 law  
24 reviews. I think it's been download almost 50,000 times.

25 Q. Great. And have you ever testified in -- or have you ever

1 provided expert testimony in a case before?

2 A. Yes. I've provided expert witness reports in something  
3 like a dozen cases. My work has been cited by several dozen  
4 federal and state courts. It's been cited by the Supreme Court  
5 on multiple occasions, both in dissent and the majority  
6 opinions.

7 Q. Great.

8 MR. WOODS: Your Honor, I would like to move Defense  
9 Exhibit 23 into evidence.

10 THE COURT: Any objection?

11 MR. DALE: No objection.

12 THE COURT: Exhibit 23 will be received into  
13 evidence.

14 MR. WOODS: Great.

15 (Exhibit 23 was received into evidence.)

16 BY MR. WOODS:

17 Q. Have you been retained in this case to provide an opinion?

18 A. Yes.

19 Q. And what was your task in this case?

20 A. So my task was to read the complaint and the relevant  
21 documentation by provided by the A.G. Office, and to analyze,  
22 with the framework provided by the recent Bruen decision in  
23 mind, what the history of firearms regulation was, what the  
24 context in which firearms regulations were enacted, and what  
25 that might tell us about the constitutionality of current

1 firearms law in California. In this case, you know,  
2 regulations affecting the sale of firearms.

3 Q. Understood.

4 MR. WOODS: Your Honor, at this time, I would like to  
5 tender this witness as an expert firearms historian under Rule  
6 702.

7 THE COURT: He will be so designated.

8 BY MR. WOODS:

9 Q. So after receiving this task from the Attorney General's  
10 office, did you actually form an opinion?

11 A. I did. And my opinion, I think, has to be understood in  
12 the following manner. So in order to apply the Bruen  
13 framework, which requires that we understand both the history  
14 of regulation and what would be suitable analogies to  
15 contemporary firearms legislation, we have to not only look at  
16 the kind of laws that were passed but we must try and  
17 understand what were the circumstances that Americans,  
18 particularly in the founding area of 1400s, what were they  
19 doing by enacting these laws and what were the concerns and  
20 social legalities and problems that would have motivated them  
21 to enact laws or would have made the enactment of laws not  
22 really possible because, for technological reasons or certain  
23 social ills, were not yet manifested in society? So that is  
24 essentially what I was asked to do.

25 Q. And in forming your opinions, did you look at primary

1 sources?

2 A. Yes.

3 Q. From the historical era?

4 A. Yes.

5 Q. Sorry.

6 A. I looked extensively at a variety of primary sources. I  
7 think one has to -- particularly, when one is dealing with the  
8 founding era, one has to recognize that early American law was  
9 immersed in a common law culture inherited from England. Not  
10 every aspect of England's common law was transferred but many  
11 aspects of common law were absorbed into early American law.

12 So my analysis included, not just statutes but also  
13 justices of the peace manuals, newspapers, a broad range of  
14 sources that would give me insight into both what the  
15 legislators were doing but also what the society was  
16 experiencing that would lead them to enact certain kinds of  
17 regulations.

18 Q. And did you also look at the text of the Second Amendment?

19 A. Yes. Yes. One of my favorite Amendments. I would say  
20 after the Third, probably, my second favorite.

21 Q. Sure. Why not.

22 Did you also look at the text of any other amendments to  
23 compare the text of the Second Amendment?

24 A. Yes. I think many people often draw a pretty close  
25 comparison between language in the First and the Second. And,

1 of course, what is most clear, when you look at those two  
2 texts, is that they are both structured very differently and  
3 the language they use is quite distinct.

4 The First Amendment, of course, talks about an abridgement  
5 of a right; whereas the Second Amendment talks about  
6 infringement. And in 18th century English and, in particular,  
7 in the kind of legal English that was familiar to the kinds of  
8 people who would be drafting the statutes and the Second  
9 Amendment, that choice of language was quite significant. The  
10 fact that, in one Amendment, they framed the issue in terms of  
11 abridgement, and in the another, they framed it in terms of  
12 infringement.

13 Q. Okay. I want to get into the difference between those two  
14 words, as you understand it. I am showing you on the screen  
15 what has been marked as Defendant's Exhibit 24, which is a  
16 compendium of sources that I believe that you used in order to  
17 form your opinions.

18 Do you have that in front of you, or can you see it?

19 A. I do.

20 Q. Great. Okay. And so the first source, what do you  
21 understand the first source here to be?

22 A. So the first source is a very typical type of primary  
23 source that has become particularly important in light of the  
24 Supreme Court's embrace of public meaning originalism,  
25 dictionaries. And this one, probably the most famous

1 dictionary of English in the 18th century, British English, of  
2 course, is Daniel Johnson's dictionary. And it's a text that's  
3 widely cited by original scholars and jurists.

4 Q. Great. And so this is, as I understand it, the 1755  
5 version; is that right?

6 A. That's right. This is an edition that would have been  
7 fairly widely available for educated and other Americans in the  
8 era of the Second Amendment.

9 Q. And here are some excerpts from the 1755 dictionary that  
10 you looked at. And if you can see right here -- I realize the  
11 text is a little bit small, but this is the page with abridge  
12 on it?

13 A. Yes.

14 Q. And so what do you understand -- or what does this  
15 dictionary tell you about the meaning of the word "abridge" in  
16 1755?

17 A. So the choice of using the term "abridge" or "abridgement"  
18 signified that the framers, enactors, and the educated lay  
19 readers of this text would have understood that the First  
20 Amendment, which, of course, in 18th century restriction on  
21 Congress -- it hadn't been incorporated the way it is today --  
22 would have prevented Congress from diminishing or contracting  
23 the scope of the right.

24 So the clear meaning, plain meaning of this text is that  
25 Congress can't pass laws that will limit and thereby abridge

1 the freedom protected by the First Amendment. And, of course,  
2 the First Amendment protects multiple freedoms, you know,  
3 speech, assembly, et cetera, et cetera.

4 Q. They can't make the right smaller; is that your  
5 understanding?

6 A. Yes, yes.

7 Q. I am going to move to the next page where is -- and you  
8 can see it -- the entry for "infringe." Do you have that in  
9 front of you?

10 A. I do.

11 Q. Okay. I am pointing to it if you can't see it. And what  
12 do you understand -- or what does that definition there tell  
13 you about the meaning of the word "infringe"?

14 A. Sure. So by choosing to use the word "infringe," which  
15 clearly means to destroy the right, the framers of the Second  
16 Amendment clearly distinguished it from the First Amendment  
17 that, in the case of the Second Amendment, a different kind of  
18 test was hard-wired into the language of the amendment so that  
19 one, obviously, could regulate the amendment as long as one did  
20 not destroy the right substantiated in the amendment.

21 And that particular reading becomes the dominant reading  
22 for most of American history. And if you look, for instance,  
23 at the early cases that are cited by Heller, in *District of*  
24 *Columbia v. Heller*, they applied the cutting edge theory -- at  
25 least it was cutting edge when John Marshall articulated it in



1 the early Republic -- of the police power.

2 And the police power analysis that Marshall and others  
3 employed essentially looked to be the question of is the  
4 regulation a legitimate exercise of the police power, and does  
5 it infringe or, to say, destroy the right protected by -- in  
6 the case of the case law would be state arms-bearing  
7 provisions, not federal provisions.

8 So the notion of infringement dovetails nicely with the  
9 dominant framework that early American judges used to  
10 adjudicate questions about legitimate regulations of firearms.  
11 And the issue was: Does the regulation infringe it or not?  
12 You could say does it destroy it or not?

13 Q. Great. Okay. And then, as part of your research for this  
14 case, as part your research in other cases, you looked at  
15 primary sources; correct?

16 A. Correct.

17 Q. We are going to look at a couple of those primary sources.  
18 So I have -- it's page 12 on Exhibit 24.

19 A. Right.

20 Q. Which is -- what do you understand this printout to be?

21 A. So this is a law from Massachusetts, from the founding  
22 era, which makes it illegal to have a loaded weapon in a  
23 domicile in Boston. And, of course, the concern was that  
24 loaded weapons could discharge accidentally, particularly in  
25 situations where, you know, if there was a fire. And so it's

1 both a safe storage law and it's a law that is designed to  
2 prevent the harm that can come from a gun accidentally  
3 discharging.

4 Q. And why is that important to you?

5 A. Well, it suggests that the founding generation understood  
6 that firearms and gunpowder were particularly dangerous and  
7 that one had to regulate them in a robust manner. So, you  
8 know, it's difficult to try and think of an analogy for a limit  
9 on First Amendment freedoms that would be as intrusive as this  
10 kind of regulation.

11 And, indeed, when John Marshall does write about the scope  
12 of the police power, he uses gunpowder as the locus classicus  
13 of what the police power is intended to do.

14 Q. But Massachusetts wasn't the only state with one such law,  
15 was it?

16 A. There are a variety of different kinds of regulations  
17 about gunpowder in virtually every state and every locality.  
18 And in many instances, when a new municipality is created, the  
19 description of what the scope of police regulation permissible  
20 by that entity often uses gunpowder as the illustrative example  
21 of what the police power entails.

22 Q. In fact, if you are looking at the screen here, the  
23 demonstrative, which is page 16, is this an example of one such  
24 law in New York?

25 A. Yes, although you've given me the title page? I would

1 have to now see down.

2 Q. Here is the next page.

3 A. Yes. And one of the interesting things about these  
4 gunpowder laws is, 18th century Americans and early 19th  
5 century Americans, who were particularly mindful of the abuses  
6 of British power and general warrants and things of that sort,  
7 nonetheless gave government pretty broad authority to inspect  
8 private dwellings for violations of Gunpowder Storage Act  
9 because they believed that the threat posed by gunpowder was so  
10 important to meet, to remediate that inspectors had fairly  
11 broad authority to inspect private dwellings, to make sure that  
12 they were in compliance with the law.

13 Q. When you say, "gunpowder regulations," you are not  
14 referring to just simply storage of gunpowder but also  
15 gunpowder and how it interacts with privately owned firearms;  
16 correct?

17 A. Sure. I mean, what is amazing about the gunpowder  
18 regulations is they cover virtually everything from the moment  
19 of production to sale to transportation to storage.

20 Q. Okay. Great. I am going to shift gears a little bit.  
21 And as part of your regulation -- or excuse me.

22 As part of your research, did you also find laws about  
23 proofing firearms?

24 A. Yes. And, you know, this is -- this particular law -- I  
25 was aware of a slightly later version of this law, but I

1 actually only found this law about two weeks ago, which, of  
2 course, is an important reminder that this field is fairly  
3 young and we're still finding new things all the time and that  
4 our research mission has yet to be completed, although we have  
5 done a lot of research, at least, in Toulouse Society when  
6 there was actually fairly little of this kind of research.

7 And so this is a law that has the preamble -- and, of  
8 course, preambles were very important, in the 18th century and  
9 in the early 19th century, that government has a right and an  
10 obligation to inspect firearms to make sure they are safe and  
11 to impose standards on firearms to ensure that they are safe.

12 Q. And so this law indicates it was enacted in 1805; is that  
13 right?

14 A. Right.

15 Q. Okay. And I understand that you've read this law.

16 How do you understand this law to work, to operate?

17 A. And one thing to keep in mind, by the way, Massachusetts  
18 is, perhaps, the key state in terms of producing small arms t  
19 this moment.

20 So this is the equivalent of Michigan, in the late 20th  
21 century, enacting a safety law pertaining to cars. So, you  
22 know, the Springfield Armory, which becomes one of the most  
23 important sites of the production of firearms and pioneers many  
24 new techniques in creating them is, obviously, located in  
25 Massachusetts as well.

1           So the idea here is that, before firearms can be sold, it  
2           must be properly inspected, and the inspector must put a stamp  
3           on it so that people who purchase these arms can know that they  
4           are safe.

5           Q.    And that's what is meant by "proof" of firearms in this  
6           law; is that right?

7           A.    Yes.

8           Q.    The actual --

9           A.    So, essentially, these arms are going to inspected,  
10           tested, and then stamped.

11          Q.    Okay. And what is the purpose of that stamp?

12          A.    So the stamp, in this context, is so that anyone who  
13           purchases one of these firearms knows that it has been  
14           subjected to the appropriate government scrutiny.

15          Q.    And was it -- is it your understanding that, pursuant to  
16           these laws, it was illegal or impermissible to sell firearms in  
17           Massachusetts that had not been proofed?

18          A.    Yes. That's correct.

19          Q.    Okay. And you said that you were familiar with a later  
20           version of this law. I think I'm going to show it to you. And  
21           it's on page 10 of this -- oh, no. I apologize.

22          A.    This one is the main version of the law.

23          Q.    Yeah. That's a main version of the law?

24          A.    Yeah. We are talking about the Massachusetts version.  
25           But Maine, the earlier culture, legal culture of Maine, is very

1 closely tied to Massachusetts. Maine was originally part of  
2 Massachusetts and only was spun-off as a separate state in the  
3 period of the 1818's.

4 Q. Let's go to -- let's see. Sorry. Is this the 18 --  
5 that's the 1805 version. And this is the 1814 version.

6 A. The 1814 version, yes.

7 Q. Of the same proofing act?

8 A. Uh-huh.

9 Q. And collectively, what do you interpret these statutes to  
10 mean, as they relate to the regulation of firearms at the  
11 founding?

12 A. So there are a couple of broad principles that we need to  
13 keep in mind when trying to understand what these laws all mean  
14 when we assemble them together.

15 So government took a very active role in shaping the  
16 market for firearms. And government took a very active role in  
17 regulating firearms. And the idea that somehow regulation is  
18 incompatible with the right to keep and bear arms is a very  
19 modern and recent idea; that, in fact, in the 18th century,  
20 there is no liberty without regulation.

21 And we have, you know, a variety of different commentators  
22 who constantly emphasize that. And it's one of the most  
23 important tasks of the historian to sort of divest yourself of  
24 modern, contemporary assumptions that we bring to our reading  
25 of texts, set them aside, and try and reconstruct the very

1 different world in which these people inhabited.

2 And that is an essential part of the historian's task,  
3 which if you just sort of look up old laws and read them, you  
4 are likely to misinterpret them because you're not  
5 reconstructing -- you're not reading them the way an  
6 18th century American would have read them. You are very  
7 likely reading them in the way a modern American would, and  
8 this is the sort of classic anachronistic fallacy that we see  
9 in so much -- particularly in this area, where people are so  
10 emotionally involved in the issue and are so committed to a  
11 particular policy agenda today. It is very easy to smuggle in  
12 those kind of assumptions.

13 But the first thing we teach our graduate students is they  
14 have to set those aside, to the extent that it's humanly  
15 possible, and you have to begin to think like those in the past  
16 thought.

17 Q. So these laws, these sort of gunpowder storage -- and I  
18 want to focus on the gunpowder storage laws. You said that  
19 they were fairly common in the colonial period, not just in  
20 Massachusetts and New York?

21 A. You find them everywhere. And they are ubiquitous and  
22 far-reaching in terms of the power they give the state to  
23 ensure that this very dangerous product does not cause any  
24 unnecessary harm to society.

25 Q. Was that consistent with the, sort of, general public and

1 understanding at the time, that firearm regulation was a  
2 function of the state?

3 A. Yes. I mean, there is simply no way to make sense of  
4 early American law without understanding that regulation is not  
5 antithetical to liberty. It is the absolute, necessary  
6 precondition for the exercise of liberty, because the founding  
7 era had a concept that has gone almost out of use in terms of  
8 contemporary language. They would describe what they would  
9 have called an excess of liberty as licentiousness and as a  
10 threat to what they perceived to be the true goal of the  
11 Constitution, which is ordered liberty.

12 Q. You said, as part of your research in this case, that you  
13 read the complaint and some of the other pleadings that were  
14 filed.

15 Do you have a general understanding of the unsafe handgun  
16 law in California?

17 A. Yes. I'm not an expert on modern firearms policy, and I  
18 wouldn't claim to be an expert on modern firearms technology.  
19 But my understanding is that California is trying to make their  
20 population safer, and they are trying to protect liberty in a  
21 way that is consistent with constitutionally protected  
22 freedoms. But that effort is obviously deeply rooted in  
23 American history where we've been regulating firearms since the  
24 first firearms were brought to America from England.

25 Q. Right. And in your opinion, are these historical laws



1 that you've mentioned so far, the gunpowder storage laws, the  
2 prohibition against keeping loaded firearms, and proofing  
3 laws -- are these laws analogous to California's Unsafe Handgun  
4 law?

5 A. Yes. I mean, the job of judging exactly how good an  
6 analogy they are, from the point of view of modern  
7 jurisprudence, it's, obviously, not the job of a historian.  
8 But the job of the historian in this case, I believe, is to  
9 understand what these laws were trying to do, what they were  
10 responding to, and what understanding of power and liberty they  
11 embodied, and then try and figure out, you know, how close a  
12 match it is to contemporary laws, which, of course, is what we  
13 have judges for.

14 Q. Would you agree that there is a long history and tradition  
15 of state regulation of firearms for the purpose of making these  
16 firearms safe for public ownership and use?

17 A. Absolutely. Yes. I mean, whenever -- I mean, the other  
18 thing to keep in mind is that, you know, firearms technology  
19 has changed. And, typically, what we see is, when firearms  
20 technology changes, there is a time lag before a new technology  
21 is brought to market. Then there is usually another time lag  
22 before it achieves market penetration. And it's only at that  
23 point that we begin to see problems. And it's at that point  
24 that we see legislators trying to do what legislators have  
25 traditionally done, which is protect liberty while addressing

1 the necessity of promoting public welfare and safety.

2 Q. And you've touched on this, but I want to get, you know,  
3 sort of like a focused answer, if I can, about why it was  
4 important for states in the founding era, specifically states,  
5 to ensure that publicly owned firearms were safe to use?

6 A. Well, firearms in early America have many, many uses, and  
7 early America was unquestionably a better armed society than  
8 any society in the 18th century world. And I think, where you  
9 have a high level of firearms ownership, you necessarily need a  
10 robust and effective regulatory regime, so that any potentially  
11 harmful consequences of the widespread ownership and use of  
12 firearms does not result in excessive harm to society.

13 Q. You mentioned -- you testified earlier that Massachusetts,  
14 specifically, was kind of the Detroit of firearms back in the  
15 day, the main manufacturer.

16 Did other states have a role in sort of encouraging the  
17 manufacturer of arms during the founding period?

18 A. Yes. My own state of Connecticut, of course, becomes one  
19 of the major locations of firearms manufacturing, the  
20 Connecticut River Valley. You know, this is, of course, where  
21 Colt and Whitney and several other iconic manufacturers of  
22 firearms set up business, in a little bit later period,  
23 slightly after the period in which these laws are occurring.

24 Because one thing we need to keep in mind, of course, is  
25 that there are hardly any pistols in the founding era. You

1 know, over 90 percent of the firearms owned by Americans were  
2 long guns. So we don't really see the problems that we  
3 associate with handguns until they become cheaper, more  
4 reliable, and more available. And that wouldn't really be the  
5 case until, you know -- it's an upward trajectory, but it  
6 really takes off, you know, so that by 1848, when Colt perfects  
7 its revolver, that is sort of the golden era of handguns in  
8 early America.

9 But, essentially, at the time of the Second Amendment, if  
10 you are not someone like Alexander Hamilton and buying a  
11 dueling pistol, you are not really going to put food on the  
12 table with a pair of dueling pistols.

13 Q. Understood. But as part of encouraging the manufacturer  
14 of arms, did that also include encouraging the regulation of  
15 arms?

16 A. Yes. One of the things that it's important to understand  
17 is that, there is this consistent problem that early Americans  
18 face, early American governments face, which is that Americans  
19 don't want to buy the guns that are best suited to arm the  
20 militia. They want to buy guns that are more useful for  
21 putting food on the table, because it is largely an agrarian  
22 society, or guns that are more useful for getting rid of  
23 critters that are eating your crops.

24 So really, the entire structure of early American policy  
25 is to shape the nature of the market and to intervene, to

1 encourage actors to do what the government believes is in the  
2 best interest of American security.

3 Q. Now, in this role of actively encouraging the manufacturer  
4 and the safety of arms, did that role continue into this sort  
5 of Civil War and reconstruction era?

6 A. It does. One of the amazing things about the period of  
7 reconstruction is that the number of firearms regulations  
8 explodes. You see efforts to regulate firearms in a number of  
9 areas that were just not perceived to be that important in the  
10 earlier period. For instance, you see the number of laws  
11 limiting access of guns to -- limiting access of minors to guns  
12 expand enormously in this period.

13 So, you know, there is this idea that somehow the  
14 Fourteenth Amendment and Reconstruction was designed to prevent  
15 gun regulation, but, in fact, it's very clear that what they  
16 were trying to do was to prevent racially targeted  
17 disarmaments, the Black codes.

18 The moment that Republicans, who were the great champions  
19 of the Fourteenth Amendment -- the moment they got into office  
20 they enacted sweeping gun regulations because they were dealing  
21 with unprecedented levels of gun violence. And they had to  
22 protect these recently freed slaves and the Republicans who had  
23 come to the South to help restore order.

24 So Reconstruction is really a golden era of gun  
25 regulation, a legal note from reading some of the more popular

1 discussions of this period.

2 Q. So you were on Zoom earlier when plaintiffs' expert,  
3 Dr. Cramer testified.

4 Do you recall that?

5 A. Yes.

6 Q. And do you recall that he testified about sort of a  
7 monolithic gun culture.

8 Do you recall that testimony?

9 A. I do. And, you know -- and one of the most interesting  
10 things that we now know from research is that American gun  
11 culture has never been monolithic. I mean, today, the attitude  
12 towards guns that you see in Alaska is very different than the  
13 attitude you see towards guns in the Bronx. And that's been  
14 true, really, since the very beginning of American history.

15 Levels of gun ownership, the type of guns owned, the  
16 robustness of the regulatory regimes have always varied by  
17 region in America.

18 There's a wonderful article called "Firearms Localism" in  
19 the law journal that explores some of these issues. And so,  
20 you know, if you think about it, firearms regulation really is  
21 the perfect illustration of the founders' genius because it is  
22 the great illustration of how the principle of federalism  
23 allows America to deal with the very different regional  
24 cultures around guns.

25 Q. All right. Dr. Cornell, do you recall -- I realize you've

1 been asked or retained in several different cases. Do you  
2 recall when you were specifically retained in this case?

3 A. Oh, gosh. You know, I must confess that I would have to  
4 look that up, because it does seem like every week I am talking  
5 to a different AG's office.

6 Q. Fair enough.

7 A. And sometimes I'm talking to your office on different  
8 cases in the same week.

9 Q. Understood. Let me ask this in a different way.

10 How long have you been working on your opinions in this  
11 case, if you can recall?

12 A. So this particular case, of course, came to me rather  
13 late, so I've really only been working on this one, I'm  
14 guessing, less than two months. Maybe a month, month and a  
15 half.

16 Q. Okay. And you formed -- through some research, as you've  
17 testified to, you formed some opinions about historically  
18 analogous laws or laws that you think are historically analysis  
19 to the Unsafe Handgun Law Act; is that correct?

20 A. That's correct.

21 Q. Now, in general, and not necessarily just for this  
22 particular motion, but how long does it take -- how long would  
23 it take you to do sort of full historical analysis, making sure  
24 that you've crossed all the t's and dotted all the i's?

25 A. So depending on how much research I have already done on a

1 particular topic, it could take, easily, three to four months,  
2 maybe six months, depending on how new the issue is. I mean,  
3 one of the things that you have to do, again, if you are not  
4 going to approach this in an antiquarian fashion, if you're not  
5 just going to look up old laws and say, you know, "There is no  
6 exact law like the one today," end of case, if you are going to  
7 do what Bruen really asked us to do, which is to recognize that  
8 this analogical process does not require us to find twins and  
9 so the processes somehow must steer a course between, you know,  
10 the blank check and the straitjacket, as Justice Thomas  
11 colorfully phrases it, that means you not only have to dig for  
12 these laws but you really need to dig into the social,  
13 cultural, economic, military history to sort of see, wow, what  
14 does it mean that there is no law? Is there no law because  
15 there is a comparable problem and they choose not to pass the  
16 law? Or are we really dealing with a situation where there is  
17 just no comparable problem?

18 And in many cases, given how different firearms technology  
19 is and given how different early American society was, in most  
20 cases, I think it generally turns out that we're just dealing  
21 with different problems. But in order to be sure about that,  
22 you really have to do your homework and really range it widely  
23 over all of this history so that you're -- you know, again, the  
24 goal is always to read these law as someone in the 18th century  
25 would have read them, not as someone in the, you know,

1 21st century would've done.

2 Q. Understood.

3 MR. WOODS: Your Honor, I would like to move Defense  
4 Exhibit 25 into evidence. Or is it 24?

5 MR. DALE: 24.

6 MR. WOODS: Apologies. 24.

7 THE COURT: Any objection?

8 MR. DALE: No objection.

9 THE COURT: Exhibit 24 will be received in evidence.  
10 (Exhibit 24 was received into evidence.)

11 MR. WOODS: All right. Dr. Cornell, I have no  
12 further questions for you at this time.

13 THE WITNESS: All right. Thank you very much.

14 CROSS-EXAMINATION

15 BY MR. DALE:

16 Q. Good evening, Dr. Cornell. My name is Joshua Dale. I'm  
17 an attorney for the plaintiffs in this matter. I appreciate  
18 your time tonight and thank you for hanging in there with us.  
19 I know it's getting late. I'll try to make this quick.

20 I am going to go ahead and put Exhibit 24 back up here,  
21 really quick. Figure out how to do it.

22 MR. WOODS: You might need to get permission.

23 BY MR. DALE:

24 Q. And this was the exhibit that was just admitted. You  
25 testified that there were -- let me make sure I get your words



1 here correctly -- there were so many gunpowder laws during the  
2 founding and through the period of the adoption of the  
3 Fourteenth Amendment, that they were ubiquitous; correct?

4 A. Correct.

5 Q. Okay. Let's look at Exhibit 24, because this was your  
6 client here, the State's opportunity to present those laws.

7 Can you identify for me in Exhibit 24 how many gunpowder  
8 laws are identified?

9 A. So this is an illustrative example. This isn't a  
10 comprehensive table or list of all gunpowder laws.

11 Q. Why not? This was the State's chance. Why not?

12 A. Well, had we produced a formal declaration, probably we  
13 would have made a decision to do one of two things. We would  
14 have either produced a lengthy appendix with those laws or more  
15 likely -- or I hope more likely, because it would have been  
16 more economical for the Court, to simply cite to the  
17 scholarship that documents them or a very lengthy footnote that  
18 would have listed them.

19 So I don't know that I would necessarily conclude anything  
20 from the fact that we gave you an example. It doesn't really  
21 speak to the ubiquity at all.

22 Q. You are aware of scholarship that lists all of these laws  
23 that support your testimony that gunpowder laws were  
24 ubiquitous? Is that it?

25 A. So we have a number of -- particularly since Heller, for

1 instance, there is an excellent article by Professor Spitzer  
2 that actually does count the number and types of laws. I don't  
3 have it in front of me, but he clearly documents, if not  
4 hundreds, then certainly dozens and dozens of these laws.

5 Q. All right. And that article was not included as part of  
6 defendant's exhibit today; is that correct?

7 A. Well, had we done a report, it is an article that I cite  
8 with great frequency, but for purposes of this -- I guess  
9 it's -- we're in a hearing, not a deposition; right? We didn't  
10 feel it was necessary to do that.

11 Q. Okay. And then you've testified about how there were  
12 numerous jurisdictions that had proofing laws. And if I  
13 understand that correctly, "proofing" refers to making sure  
14 that the firearm is sound; that it's not going to blow up or do  
15 something that might injure the user or somebody who is nearby.

16 Is that a fair representation?

17 A. So, actually, what I said is, the fact that Massachusetts  
18 had one was especially significant, because Massachusetts is  
19 one of the leading producers of firearms in this period. So  
20 that a single law from Massachusetts would be comparable to a  
21 single law from Michigan dealing with car safety in the late  
22 20th century.

23 I actually haven't had time, because I've -- like I said,  
24 I only just found this 1805 law about two weeks ago, so I  
25 actually haven't had time to finish the research to see how

1 ubiquitous those laws were.

2 Q. Well, let me just make sure I am clear. And I am being  
3 genuine about this. I count five laws listed in Exhibit 24.

4 Do I have that count right?

5 A. I suppose I could sit here and count them. But, yes,  
6 these are five illustrative laws, correct.

7 Q. Understood. And you understand that part of the Bruen --  
8 well, let me -- you've testified that you've read Bruen;  
9 correct?

10 A. Yes.

11 Q. Yes. And you understand that part of the Bruen test  
12 includes figuring out what are outlier laws and rejecting those  
13 to determine if the analogues show some consensus among folks  
14 from the founding to the 14th Amendment.

15 Would you agree with that characterization, or would you  
16 dispute it?

17 A. So the question of what constitutes an outlier based on  
18 Bruen is pretty much, I think, up for grabs in the courts  
19 because the general consensus among commentators, that I've  
20 read, is that it's not quite clear because the court seems to  
21 change the definition of what constitutes an outlier.

22 So, for instance, in one sense, a single law from  
23 Massachusetts might be read as an outlier if the relevant  
24 criteria was number of laws. But if one then, you know,  
25 contextualizes the Massachusetts law, recognizing that it would

1 be comparable to a law from Michigan in the 20th century about  
2 cars, given that the vast majority of cars are produced in  
3 Michigan, then claiming that it's an outlier solely based on,  
4 you know, the numerical count would actually misrepresent the  
5 historical reality.

6 would you agree?

7 Q. well, I don't know if it's my place to agree.

8 But my question for you is, in terms of Bruen, can you  
9 identify anywhere in the language where it says that certain  
10 laws from certain states are to be given more weight in  
11 determining whether they are historical analogue than laws from  
12 other states?

13 A. well, it seems to me Bruen very clearly says that some  
14 laws from some states are not to be given weight. It seems to  
15 leave open the -- you know, the logical -- it's been such a  
16 long time since I've studied logic. I took a course when I was  
17 an undergraduate.

18 So certainly, therefore, the question of whether or not  
19 some state having a law, if its population was sufficiently  
20 great, if its production of firearms was sufficiently great,  
21 that it would not be an outlier, and that is certainly  
22 consistent with Bruen.

23 Q. well, no. But Bruen focused specifically on numerosity.  
24 In fact, the State of New York cited to them laws in places  
25 like Texas and in frontier territories. And the majority

1 opinion specifically rejected them because they were not  
2 indicative of laws across the United States.

3 Isn't that a fair characterization?

4 MR. WOODS: Objection. Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: well, of course, the problem with that  
7 is, we have also the Kavanaugh Concurrence, which reaffirms  
8 some of Heller's presumptively lawful laws which might not  
9 square with the criteria you just laid down, which sort of  
10 leaves it a little bit hard to know what to do.

11 BY MR. DALE:

12 Q. Well, you testified that, in taking on this assignment,  
13 you read the Second Amendment.

14 A. I did.

15 Q. And you actually provided it, the first part of  
16 Exhibit 24, an analysis of the difference between the use of  
17 the word "abridgement" and "infringement" as it was understood  
18 in English law prior to the founding.

19 Do you recall that testimony?

20 A. Correct. Yes.

21 Q. My question for you is: why did you do that? I don't see  
22 that in anywhere in the Bruen opinion.

23 A. Well, Bruen consistently refers that the text is the  
24 ultimate arbiter of constitutional meaning.

25 Q. Correct. But it also held a specific test, and that's

1 looking at whether or not a current law impacts the core  
2 exercise of the right and then, in turn, to see if there are  
3 historical analogues that support that particular regulation.

4 So I guess my question is: why are you looking at a  
5 definition for something like infringement and discussing  
6 obliterating the right when that is not the text that was laid  
7 out in Bruen?

8 MR. WOODS: Objection. Argumentative.

9 THE COURT: Overruled. You don't have to adopt any  
10 characterization in the question, Professor.

11 THE WITNESS: Well, it seems to me, Bruen makes it  
12 very clear that tradition does not trump texts; so, therefore,  
13 getting the meaning of the text right is at the very core of  
14 the enterprise.

15 BY MR. DALE:

16 Q. Okay. And then you also testified, as part of assessing  
17 whether there were historical analogues, you looked at concerns  
18 that society was going through during the relevant period,  
19 social realities, and problems.

20 Do you recall that testimony?

21 A. Yep.

22 Q. And, again, I would ask you: where from the Bruen case is  
23 there any language that says that, in looking at historical  
24 analogues, you should be looking at societal problems or  
25 concerns of society in assessing whether or not a historical

1 analogue exists?

2 A. Well, Bruen makes it very clear that, if you are going to  
3 engage in the process of constructing an analogy, in order to  
4 construct an analogy, you have to understand what you're  
5 analogizing. And Bruen, also, very, very clearly states that  
6 we are trying to understand what is the burden. And, also,  
7 we're trying to understand whether contemporary law is  
8 addressing an issue that was of a similar nature to the -- to  
9 problems that the founding era experienced.

10 So if you are going to -- since Bruen says we must  
11 understand whether or not, for instance, a contemporary law is  
12 addressing a new social problem, that the founding era could  
13 not anticipate, or whether or not they are dealing with the  
14 same problem, well, that invariably means you have to  
15 understand what those problems were. It seems to me that's  
16 indisputable.

17 Q. So let me ask you -- you've testified that you're an early  
18 American historian. You're a constitutional historian. You've  
19 written a book on the Second Amendment.

20 would you call yourself an expert in the history of the  
21 Second Amendment?

22 A. Sorry. Can you repeat the question?

23 Q. Yeah. I was asking if you would consider yourself an  
24 expert on the history of the Second Amendment?

25 A. Well, I was asked to write the chapter on the Second

1 Amendment in the Oxford handbook of the U.S. Constitution,  
2 which was edited by Sanford Levinson, Mark Tushnet and -- see,  
3 I have it here somewhere on my shelf -- and Mark Graber.

4 And actually, I was recently interviewed by the head of  
5 the Rothermere Institute at Oxford about the Second Amendment.  
6 So I think I am generally regarded as the leading authority on  
7 the history of the Second Amendment.

8 Q. Okay. But as you sit here today, if I understand your  
9 testimony, you need more time in order to be able to perform  
10 the tasks that was asked of you by the State to identify  
11 historical analogues; is that correct?

12 A. So in order do the analysis properly, which requires not  
13 simply finding laws but trying to understand what were the  
14 issues that that society was dealing with that would have  
15 impacted firearms, that does require a deep dive that is  
16 slightly distinct from the kinds of issues that I've looked at  
17 before.

18 And, indeed, almost all of the writing about the Second  
19 Amendment, up until Heller, focused on a very, very narrow  
20 issue. The only issue that people seemed to talk about was  
21 whether it was an individual or collective right.

22 So we've actually have only had about a decade's worth of  
23 serious scholarship moving beyond that question, which Heller  
24 obviously solved. So it is a really young field.

25 Q. Well, you've been writing about it for more than 20 years,



1    though; correct?

2    A.    well, I've been writing about certain aspects of it, but I  
3    haven't written about every aspect of it.

4    Q.    well, let me pull up one here. I want to ask you --  
5    because I want to ask you about one of your writings. Let me  
6    pull up Exhibit 9. I will share this.

7           Do you recall writing an article for the Northern Kentucky  
8    Law Review? And I want to say the date on this was 2002,  
9    called "Don't Know Much About History: The Current Crisis in  
10   Second Amendment Scholarship."

11   A.    Yes.

12   Q.    Okay. And in that you -- well, let me ask you this sort  
13   of as a preparatory question.

14           You understand what the individual right theory of the  
15   Second Amendment is; correct?

16   A.    I do.

17   Q.    As opposed to, for example, the collective right theory?

18   A.    Correct.

19   Q.    Okay. And in this particular paper, you argue for a third  
20   way, which is, essentially, the civic right argument; correct?

21   A.    Correct.

22   Q.    Okay. And, in fact -- and let me -- so that folks  
23   understand this, I am going to take you page 657.

24           And you write -- I'm going to start with the second  
25   sentence -- "The two dominant interpretations of the Second

1 Amendment, the individual rights --

2 (The court reporter interrupted.)

3 BY MR. DALE:

4 Q. "The two dominant interpretations of the Second Amendment,  
5 the individual rights, and the collective rights models, no  
6 longer seem capable of accounting for the complexity of the  
7 historical evidence about the meaning of the right to bear  
8 arms."

9 So this is the introduction where you then go on to talk  
10 about how you believe the Second Amendment should be  
11 interpreted through this civic right model that you've  
12 identified; correct?

13 A. Correct.

14 Q. Okay. And for those historians who adopted a belief that  
15 the individual right theory was the correct way to interpret  
16 the Second Amendment, you were critical of their work, weren't  
17 you?

18 A. Yes.

19 Q. And so, for example, if we go to page 661 of this  
20 particular document, I believe you use a term that we heard  
21 previously. So we look down at this paragraph here, and it  
22 says, "Reynolds" -- and are you referring there to University  
23 of Tennessee Professor Glenn Reynolds; correct?

24 A. Correct.

25 Q. Right. And you say, "Reynolds is not the only gun rights

1 advocate to approach the phrase 'right of the people' in an  
2 anachronistic fashion."

3 And I think we heard you use "anachronistic" before;  
4 right?

5 A. Correct.

6 Q. And Reynolds, to your understanding, is a historian who  
7 argued for the individual right model, correct?

8 A. No. Reynolds has no training in history.

9 Q. Okay. So you're saying that you were citing Reynolds,  
10 even though he has no training in history?

11 A. Well, he's a law professor, and he does what, I think, is  
12 often described as law office history, but I don't think that  
13 is considered to be a serious genre of historical writing.

14 Q. What is law office history?

15 A. So law office history is a kind of enterprise where you  
16 work backwards from the present instead of working forward from  
17 the past, which is the sort of standard approach amongst  
18 historians. It is generally not well-researched. It is  
19 generally not up-to-date in terms of the scholarship. And it's  
20 generally trying to use history to advance a contemporary  
21 policy agenda.

22 Q. And that's what you believe Professor Reynolds was or has  
23 engaged in; correct?

24 A. Correct.

25 Q. All right. And you've also been critical of Don Cates and

1 Professor Randy Barnett; correct?

2 A. Yes.

3 Q. And they both advocate for the individual right theory of  
4 the Second Amendment; correct?

5 A. Yes. They're both modern libertarians, and so, therefore,  
6 they tend to read 18th century texts as if they were  
7 ghost-written by Ayn Rand.

8 Q. And in assessing their interpretation, you've often used  
9 the term "anachronistic"; correct?

10 A. Yes.

11 Q. Okay. And, in fact, you believe the Supreme Court engaged  
12 in law office history or law office research, don't you?

13 A. Well, the term "law office history" was coined to refer to  
14 the practices of the U. S. Supreme Court, originally.

15 Q. But when you've used that term with the Supreme Court, you  
16 haven't used it flatteringly; correct? You've used it  
17 critically?

18 A. I would say "analytically" would probably be the most  
19 precise term.

20 Q. All right. Let's look at some of that analysis.

21 I am going to bring this up.

22 MR. WOODS: Counsel, which exhibit?

23 MR. DALE: We are going now to exhibit -- well, the  
24 numbers have changed.

25 (A discussion was held off the record between Counsel.)

1 BY MR. DALE:

2 Q. So you wrote an article here, and if we look at the  
3 date -- let me confirm.

4 This is an article that you wrote that was published  
5 SCOTUSblog; correct?

6 A. Correct.

7 Q. And it was published on June 27th of last year, which  
8 would be about three days after Bruen was decided?

9 A. Just about.

10 Q. And it was written in response to the Bruen decision;  
11 correct?

12 A. Correct.

13 Q. And in it, you wrote -- let's look here. Make sure I have  
14 the right parts. Let's take a look.

15 So the first paragraph you call "The majority opinion  
16 invokes the authority of history but presents a version of the  
17 past that is little more than an ideological fantasy."

18 Do you recall writing that?

19 A. We have it right here.

20 Q. Yeah. And you said, "Rather than applying the history,  
21 text, and tradition, it would most accurate" -- "be more  
22 accurate to characterize Justice Thomas's decision as an  
23 illustration of the current Supreme Court's new interpretative  
24 model -- fiction, fantasy, and mythology."

25 And then paragraph two -- let me see if I can find that.

1 You write, "It is hard to dispute Justice Breyer's negative  
2 characterization of his colleagues' tendentious, error-filled,  
3 and highly-selective culling of evidence to vindicate their gun  
4 rights agenda."

5 You wrote that correct, too?

6 A. Correct.

7 Q. You said, "Justice Thomas quoted Dred Scott approvingly."  
8 Do you recall that?

9 A. Yes.

10 Q. And then you also, down in paragraph three, you said that,  
11 "To describe the Thomas version of the past as a caricature  
12 understates the case in the bizarro constitutional universe  
13 inhabited by Thomas. Shakespeare's England was filled with  
14 pistol-packing peasants."

15 (The court reporter interrupted.)

16 BY MR. DALE:

17 Q. Do you recall writing that?

18 A. Yes.

19 Q. And then in the following paragraph, you write that, "It's  
20 a license to cherry-pick evidence with reckless abandon if the  
21 materials support the ideological agenda of the federalist  
22 society."

23 Do you recall writing that?

24 A. Yes.

25 Q. Okay. And then -- I mean, I am going to not belabor the

1 Court with this because there are a lot more quotes in here in  
2 which you are -- I think it would be fair to characterize it  
3 highly critical of the majority opinion in Bruen; correct?

4 A. That's fair.

5 Q. Okay. And I think you concluded that -- or at least in  
6 paragraph 11, you referred to Justice Neil Gorsuch and Justice  
7 Amy Coney Barrett as ideological warriors and political hacks.

8 Do you recall that?

9 A. You'll have to scroll down, because I haven't committed it  
10 to memory.

11 Q. Sure. If I can find it for you.

12 A. Yep. Okay.

13 Q. So you were somebody who, in multiple publications,  
14 championed the civic right theory of the Second Amendment, as  
15 you previously testified; right?

16 A. Yes.

17 Q. And the Supreme Court rejected that and went with the  
18 individual right theory in Heller, didn't it?

19 A. That's correct.

20 Q. And you don't agree with them doing that; correct?

21 A. Well, I guess -- I mean, I am flattered that you read the  
22 article, but one of the first things -- you know, one of the  
23 fascinating things about teaching both undergraduates, graduate  
24 students, and law students is my undergrads have a very, very  
25 difficult time understanding how can you criticize something

1 and then apply the law in a decision that you don't agree with.

2 But I say, "Well, if you don't figure that out, you  
3 probably ought not to go to law school."

4 So I am not sure what any of this has to do with my  
5 ability to apply the framework that was adopted in Bruen to the  
6 historical with record. I mean, if lawyers couldn't make  
7 arguments about positions that they didn't agree with, they  
8 wouldn't have much work, would they?

9 Q. But you are asking the Court to accept your opinion as  
10 expert and not tainted by biases when you testify about things  
11 like ubiquitousness of gunpowder laws, aren't you?

12 MR. WOODS: Objection. Argumentative.

13 THE COURT: Overruled.

14 THE WITNESS: Well, it seems to me that -- I mean,  
15 one simply has to think of the situation that any of the  
16 current Supreme Court Justices, when asked during their  
17 confirmation, you know -- Amy Coney Barrett, for instance, she  
18 wrote law review articles.

19 And people said, well, how could we approve you as a  
20 Supreme Court Justice? You wrote these law review articles  
21 that are critical of Supreme Court methodology," because she  
22 was a strong supporter originalist.

23 And she said, "Well, you know, I was a professor, and  
24 that's what professors do. As a judge, I apply the law."

25 So, again, I am not really sure that there is any real



1 logical connection between a criticism that you make when you  
2 are writing in one role and applying the law in another role.  
3 That is what we do every day of our life as professionals.

4 Q. Okay. As you sit here today, can you identify for the  
5 Court how many jurisdictions had barrel or gun-proofing laws  
6 between the founding and the adoption of the Fourteenth  
7 Amendment?

8 A. Well, as I said, since I only found the gun-proofing law  
9 about two weeks ago, that is kind of why I need the time to  
10 actually figure that one out.

11 Q. So with regard to gun-proofing, do you have any evidence  
12 at this point that it wasn't an outlier similar to the Texas  
13 law that was identified in the Bruen case?

14 A. Well, as we've already discussed, it can't, by definition,  
15 be an outlier, if most of the guns in America were subject to  
16 it; right? Because if most of the guns in America at the time  
17 were being produced in Massachusetts, subject to this law, that  
18 means most of the guns in circulation would have been subject  
19 to this law. So I think you are applying the wrong rule. You  
20 are being overly literal in terms of reading Bruen's  
21 methodology.

22 I think Justice Thomas, to his credit, said that we need  
23 to be somewhat more sophisticated and nuanced when we're  
24 dealing with historical complexity.

25 Q. Okay. With regard to your article criticizing the

1 Justices on the majority in the Bruen decision, --

2 A. Yes.

3 Q. -- you actually took exception with Thomas rejecting the  
4 Texas laws that were cited in that decision; correct?

5 A. I did.

6 Q. And, in fact, you said that you the majority was incorrect  
7 in treating it as an outlier?

8 A. That's correct.

9 Q. And is your opinion that the Supreme Court was incorrect  
10 in treating it as an outlier -- did that color the way in which  
11 you approached your assignment that the State asked you to do  
12 in looking for historical analogues with regard to the Unsafe  
13 Handgun Act?

14 A. No. It had very little to do with it. So when I  
15 uncovered this law, I thought to myself, as a historian, since  
16 the question of how influential, representative, significant a  
17 law is, the different ways of describing the outlier  
18 question -- since having read Bruen, I knew that that is now an  
19 important question. That is precisely why I went out and I did  
20 some research about the early history of gun manufacturing and  
21 confirmed what I thought to be true but needed to confirm,  
22 which is that Massachusetts was a major center of gun  
23 manufacturing.

24 So quite the opposite is the case, precisely because I've  
25 read Bruen very, very carefully. I take the rules laid down by

1 the courts quite seriously and have used them to inform my  
2 research for this project.

3 Q. So let me ask you: In coming to the conclusion you  
4 testified here about today, that Massachusetts was a major  
5 gun-producing state, during what period was it a major  
6 gun-producing state?

7 A. During the period that Bruen says is most significant, the  
8 year of the Second Amendment.

9 Q. Bruen also says that the period around the founding -- I'm  
10 sorry -- around the adoption of the Fourteenth Amendment is  
11 also important; correct?

12 A. That is correct. And it would take me some more time to  
13 do some more research to fill out that part of the story.

14 Q. Okay. And when you say that it was a major gun  
15 manufacturer, what percentage of the gun market did  
16 Massachusetts have at the founding?

17 A. I would have to pull something from the scholarly  
18 authority -- I've got that -- in order to answer that question.  
19 But, essentially, Massachusetts was the major provider of small  
20 arms in America prior to the war of 1812.

21 Q. Well, again, you used that word "major." I am just trying  
22 to figure out what you consider major, since there isn't any  
23 documentation that has been provided to support your claim  
24 here.

25 Can you identify what you mean by that?

1 A. Well, again, I would be happy, if it would help the  
2 Court -- I guess I don't know -- since we're not in a  
3 deposition, I don't know what the appropriate rules are. I  
4 could dig up the citation to the scholarly authority that is  
5 the standard account of early gun manufacturing in America that  
6 makes that claim. It was in a book that was published by the  
7 University of Penn -- I think it was the University of  
8 Pennsylvania Press.

9 Anyway, it was a top-of-the-line academic press,  
10 highly -- well-regarded, well-reviewed academic study of early  
11 American gun manufacturing. It said, unambiguously, that  
12 Massachusetts was the leading provider of small arms in the  
13 period before the war of 1812.

14 Q. Any other sources besides this one that you've identified?

15 A. In the footnotes to that claim, there are references to  
16 other authorities, but I haven't committed those to memory.

17 Q. Have you reviewed those other authorities?

18 A. Well, I looked at the footnote, and it seems quite chunky  
19 and had a lot of impressive citations to it.

20 Q. So that would be a "No"?

21 A. Well, I suppose it depends on -- are you asking me did  
22 I --

23 Q. Yeah. Let me withdraw. You picked up on an excellent  
24 point.

25 Did you review the sources that were cited in the

1 footnote?

2 A. It depends. What do you mean by "reviewed"? Did I go out  
3 and check them for accuracy? Did I pull them off the shelf?  
4 Did I look to see whether or not they seemed like the  
5 appropriate things to cite? There are sort of different  
6 standards of checking, depending on what level of confidence  
7 you have in the author and the press.

8 Q. Well, you previously testified about how people  
9 cherry-pick quotes or pull them out without the context and the  
10 importance of the context. I am trying to find out, if in  
11 coming up with your opinion today that the majority or -- I'm  
12 sorry. I should say a major source of arms manufacturing was  
13 Massachusetts, if you relied on just the one source or if you  
14 went and actually looked at the sources that were being cited  
15 to to determine whether, for example, those weren't  
16 cherry-picked citations, that those sources did, in fact,  
17 support the one book's conclusion that Massachusetts was a  
18 major source of firearms?

19 A. Well, I mean, I also -- well, actually, I also looked at  
20 an unpublished dissertation on early American gun  
21 manufacturing. I looked at some of the National Park Services  
22 documentation about the role of the Springfield Armory in  
23 western Massachusetts.

24 So, again, if this was a written report, where I would  
25 have had to actually footnote, I would have done even more.

1 But for the purposes of this proceeding, I thought I had done  
2 enough.

3 Q. So let me ask you -- you talked about the gunpowder laws,  
4 and you've asked us to take your word that they were  
5 ubiquitous.

6 Is there any crime investigation purpose that you're aware  
7 of with the gunpowder laws that existed back at the founding?

8 A. I'm sorry. Can you repeat the question?

9 Q. Yeah. Are you aware of any crime investigation purpose  
10 for gunpowder laws?

11 A. Crime investigation?

12 Q. Right.

13 A. So that is an excellent point. One of the most important,  
14 recent contributions to our understanding of early American  
15 firearms cultures and gun laws is recent work that makes very a  
16 compelling case that there was no comparable gun violence  
17 problem in the year of the Second Amendment for a variety of  
18 reasons.

19 Flintlock black powder Muzzleloader weapons are quite  
20 time-consuming to load; therefore, they're not good for crimes  
21 of passion. Because the black powder used in those guns is  
22 corrosive, leaving them loaded is not good for the maintenance  
23 of the firearm. And because the black powder is hygroscopic,  
24 it attracts moisture, which makes it unreliable.

25 So the most recent evidence we have about patterns of

1 interpersonal violence suggests that America doesn't really  
2 have a gun crime problem until the proliferation of handguns in  
3 the early 19th century.

4 Q. I'm sorry. I apologize for cutting you off.

5 My question was whether or not you had an understanding  
6 that those gunpowder laws had a crime investigation purpose.

7 A. So I guess what my response is: The gun crime is not a  
8 significant problem here in the Second Amendment we now know.

9 Q. So that would be "No."

10 A. So, yes, that would be "No."

11 Q. And the proofing, the barrel-proofing laws, did those, to  
12 your understanding, have any kind of crime investigation  
13 purpose, or were those purely for public safety?

14 A. My understanding is they were primarily for public safety.

15 Q. All right. And you also talked about -- and I recall you  
16 discussing this with the State's Counsel. There were early  
17 laws that prevented the keeping of loaded firearms.

18 Did you testify that you were aware of those laws?

19 A. Yes.

20 Q. And is it your testimony today that a law that would not,  
21 to your understanding of Bruen and the Second Amendment and the  
22 history and the historical analogues, that a law that prevented  
23 you from keeping a loaded firearm in your house for  
24 self-defense would be considered constitutional under your  
25 understanding of the Second Amendment and the historical

1 analogues?

2 A. So sorry. Are you saying: Did the founders think it was,  
3 or is contemporary Second Amendment jurisprudence likely to  
4 find such a law constitutional?

5 Q. I would go with contemporary Second Amendment  
6 jurisprudence.

7 MR. BRADY: Objection. Lacks foundation.

8 THE COURT: Overruled.

9 THE WITNESS: well, I suppose the standard reading of  
10 Heller would be that kind of safe storage law might not pass  
11 constitutional muster. But I seem to recall that there was at  
12 least one appellate case that was able to distinguish a safe  
13 storage law from the kind of law in the District of Columbia,  
14 so I don't know that we have a definitive answer to that  
15 question yet.

16 BY MR. DALE:

17 Q. Do you have an understanding that the Supreme Court's  
18 opinions are considered superior to those of lower appellate  
19 courts?

20 A. Yes. But, of course, the fact pattern has to match in  
21 order for the rules to apply, doesn't it?

22 Q. Yeah. So if I understand your testimony correctly, is  
23 part of identifying historical analogues to the current Unsafe  
24 Handgun Act, you have testified to early laws about keeping  
25 loaded firearms as evidence of appropriate regulation?



1 A. Sorry. Could you restate the question?

2 Q. Yeah, yeah. So if I understand your testimony correctly,  
3 in identifying the historical analogues that the State is going  
4 to rely upon to try to say that the Unsafe Handgun Act is --  
5 there are historical analogues to it, you've identified at  
6 least one early law that didn't allow you to keep a loaded  
7 firearm in the house; is that correct?

8 A. Yes.

9 Q. And that law, by the way, is not included in Exhibit 24,  
10 is it?

11 A. I'd have to check Exhibit 24.

12 Q. Well, let me ask you this: By your own admission, under  
13 contemporary Second Amendment jurisprudence, that sort of law  
14 wouldn't be considered something that would pass muster under  
15 the Second Amendment; isn't that right?

16 A. Well, of course, that question sort of forces me to come  
17 to a contemporary legal conclusion, which is not something  
18 that, as a historian, I could provide expert testimony on.

19 Q. Understood. Now, I want to focus you back on your article  
20 that was critical of the Bruen decision, and I want you to look  
21 at this paragraph here where you are talking about your  
22 objection to the majority calling Texas's law an outlier.

23 Do you see that? And it's right there in the middle of  
24 page.

25 A. Not on this page, but I do remember saying that.

1 Q. Okay. Well, let me make this simpler. You also, in this  
2 article, say that another example of a law that promoted  
3 regulation of firearms was Georgia's 1868 Arms Bearing  
4 Provision in their Constitution.

5 Do you see that part?

6 A. Yes.

7 Q. And, in fact, you previously testified that, in your  
8 expert opinion, there was a robust trend of regulation of  
9 firearms that sprang from the Fourteenth Amendment; correct?

10 A. Correct.

11 Q. Okay. I am going to take you to another exhibit here.

12 THE COURT: Let me ask you a question, Counsel. It's  
13 almost five to 7:00.

14 MR. DALE: Yes.

15 THE COURT: We're not going to get done by 7:00, are  
16 we?

17 MR. DALE: I don't believe we are.

18 THE COURT: Okay. So I think, in fairness to the  
19 court staff, we should break, then, today and come back  
20 tomorrow at 9:00.

21 MR. DALE: Thank you.

22 MR. BRADY: Thank you.

23 MR. DALE: Thank you. And appreciate the  
24 accommodation on this.

25 MR. SAROSY: Thank you, Your Honor.

1 MR. WOODS: Thank you, Your Honor.

2 THE COURTROOM DEPUTY: All rise.

3 (Adjourned at 6:54 p.m.)

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REPORTER'S CERTIFICATE

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10 I certify that the foregoing is a correct transcript of  
11 proceedings in the above-entitled matter.

12

13 /s/ Suzanne M. McKennon, CSR, CRR, RMR

Date: 02/03/2023

14 United States Court Reporter

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